

# P

**P.A.** *abbr.* See *professional association* under ASSOCIATION.

**paage** (*pay-ij*). See PEDAGE.

**PAC** (*pak*). *abbr.* POLITICAL-ACTION COMMITTEE.

**pacare** (*pə-kair-ee*), *vb.* [Law Latin] *Hist.* To pay.

**PACER.** *abbr.* PUBLIC ACCESS TO COURT ELECTRONIC RECORDS.

**pacification** (*pas-ə-fi-kay-shən*), *n.* *Int'l law.* The act of making peace between two belligerent nations. — **pacify** (*pas-ə-fi*), *vb.*

**pacifist.** See PACIFIST.

**Pacific Reporter.** A set of regional lawbooks that, being part of the West Group's National Reporter System, contain every published decision from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming, from 1883 to date. • The first series ran from 1883 to 1931. — *Abbr.* P.; P.2d.

**pacifism** (*pas-ə-fiz-əm*). *Int'l law.* The advocacy of peaceful methods rather than war as a means of solving disputes.

**pacifist** (*pas-ə-fist*), *n.* A person who is opposed to war; a person who believes in pacifism. — Also termed *pacifist*. Cf. CONSCIENTIOUS OBJECTOR.

**pack**, *vb.* To choose or arrange (a tribunal, jurors, etc.) to accomplish a desired result <pack a jury>.

**package mortgage.** See MORTGAGE.

**packing**, *n.* A gerrymandering technique in which a dominant political or racial group minimizes minority representation by concentrating the minority into as few districts as possible. Cf. CRACKING; STACKING (2).

**packing a jury.** See JURY-PACKING.

**Pac-Man defense** (*pak-man*). An aggressive antitakeover defense by which the target company attempts to take over the bidder company by making a cash tender offer for the bidder company's shares. • The name derives from a video game popular in the 1980s, the object of which was to gobble up the enemy. This defense is seldom used today.

**pact.** An agreement between two or more parties; esp., an agreement (such as a treaty) between two or more nations or governmental entities.

**pacta sunt servanda** (*pak-tə sɒnt sər-van-də*). [Latin "agreements must be kept"] The rule that agreements and stipulations, esp. those contained in treaties, must be observed <the Quebec courts have been faithful to the *pacta sunt servanda* principle>.

**pact de non alienando** (*pakt dee non ay-lee-ə-nan-doh*). [Latin] *Civil law.* An agreement not to alienate encumbered (esp. mortgaged) property. • This stipulation will not void a sale to a third party, but it does allow the mortgagee to proceed directly against the mortgaged property without notice to the purchaser.

**pactio** (*pak-shee-oh*). [Latin] *Civil law.* **1.** The negotiating process that results in a *pactum*. **2.** The *pactum* arrived at; an agreement.

**paction** (*pak-shən*). **1.** PACTIO. **2.** *Int'l law.* An agreement between two nations to be performed by a single act.

**pactional**, *adj.* Relating to or generating an agreement. — **pactionally**, *adv.*

**pactum** (*pak-təm*). [Latin] *Roman & civil law.* An agreement or convention; a pact. — Also termed *pactum conventum*.

**pactum constitutae pecuniae** (*pak-təm kon-stə-t[y]oo-tee pi-kyoo-nee-ee*). [Latin "agreement for a fixed sum of money"] An agreement in which someone promises to pay

an existing debt of his own or another on a certain date.

**pactum de constituto** (pak-təm dee kon-sti-t[y]oo-toh). [Latin "an agreement from a contract or compact"] An agreement under which one person will pay another's debt in exchange for which the second person agrees not to sue the first on some claim that has arisen. • The *pactum de constituto* was one of the five types of adpromission in Roman law. See ADPROMISSION.

**pactum de non petendo** (pak-təm dee non pə-ten-doh). [Latin "agreement not to sue"] An agreement in which a creditor promises to not enforce the debt.

**pactum de quota litis** (pak-təm dee kwoh-tə II-tis). [Latin "agreement about a portion of the amount in issue"] An agreement in which a creditor promises to pay a portion of a difficult-to-collect debt to a person attempting to collect it; an agreement to share the proceeds of a litigation.

**pad**, *vb.* *Slang.* (Of a lawyer, paralegal, etc.) to overstate the number of (billable hours worked). — **padding**, *n.* See BILLABLE HOUR.

**padded-payroll rule.** See FICTITIOUS-PAYEE RULE.

**paid-in capital.** See CAPITAL.

**paid-in fund.** See FUND (1).

**paid-in surplus.** See SURPLUS.

**paid-up insurance.** See INSURANCE.

**paid-up policy.** See INSURANCE POLICY.

**paid-up stock.** See *full-paid stock* under STOCK.

**pain and suffering.** Physical discomfort or emotional distress compensable as an element of damages in torts. See DAMAGES.

**pain of, on.** See ON PAIN OF.

**pains and penalties, bill of.** See BILL OF PAINS AND PENALTIES.

**pairing-off.** In legislative practice, an agreement between two legislators who are on opposite sides of an issue to abstain from voting on the issue, usu. done when one of the legislators cannot attend the session. • The pairing-off is usu. announced and made a matter of record.

**pais** (pay or pays). See IN PAIS.

**Palace Court.** *Hist.* A court having jurisdiction over all personal actions arising within 12 miles of Whitehall. • This court was created by James I in response to complaints about the inconvenience of using the itinerant Court of the Marshalsea; its jurisdiction was similar, but the court remained in Whitehall. It was abolished along with the Court of the Marshalsea in 1849. See COURT OF THE MARSHALSEA.

"The court of the *marshalsea*, and the *palace court* at Westminster, though two distinct courts, are frequently confounded together. The former was originally holden before the steward and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service. . . . But this court being ambulatory, and obliged to follow the king in all his progresses, so that by the removal of the household, actions were frequently discontinued, and doubts having arisen as to the extent of its jurisdiction . . . [the king] erected a new court of record, called the *curia palatii*, or *palace-court*, to be held before the steward of the household and knight marshal, and the steward of the court, or his deputy; with jurisdiction to hold plea of all manner of personal actions whatsoever, which shall arise between any parties within twelve miles of his majesty's palace at Whitehall." 3 William Blackstone, *Commentaries on the Laws of England* 76 (1768).

**palimony** (pal-ə-moh-nee). A court-ordered allowance paid by one member to the other of a couple that, though unmarried, formerly cohabited. Cf. ALIMONY.

**pallio cooperire** (pal-ee-oh koh-op-ə-ri-ree). [Latin "to cover with a pallium"] *Hist.* A marriage of persons who have already had a child together. • The pallium was a veil or cover over the bride, which was extended to cover the bastard child. Its removal at the wedding was deemed to legitimate the child.

**Palmer's Act.** An English statute, enacted in 1856, giving a person accused of a crime falling outside the jurisdiction of the Central Criminal Court the right to have the case tried in that court. St. 19 & 20 Vict., ch. 16. — Also termed *Central Criminal Court Act*. See CENTRAL CRIMINAL COURT.

**palming off.** See PASSING OFF.

**Palsgraf rule** (pawlz-graf). *Torts.* The principle that negligent conduct resulting in injury will lead to liability only if the actor could have reasonably foreseen that the conduct would injure the victim. • In *Palsgraf v. Long Island R.R.*, 248 N.Y. 339, 162 N.E. 99 (1928), two railroad attendants negligently dislodged a

package of fireworks from a man they were helping board a train. The package exploded on impact and knocked over some scales that fell on Mrs. Palsgraf. The New York Court of Appeals, in a 4-3 majority opinion written by Chief Justice Benjamin Cardozo, held that the attendants could not have foreseen the possibility of injury to Palsgraf and therefore did not breach any duty to her. In the dissenting opinion, Justice William S. Andrews asserted that the duty to exercise care is owed to all, and thus a negligent act will subject the actor to liability to all persons proximately harmed by it, whether foreseeable or not. Both opinions have been widely cited to support the two views expressed in them.

**pandect** (**pan-dekt**). **1.** A complete legal code; esp. of a nation or a system of law, together with commentary. **2.** (*cap. & pl.*) The 50 books constituting Justinian's *Digest* (one of the four works making up the *Corpus Juris Civilis*), first published in A.D. 533. — Also termed (in sense 2) *Digest*. — Also spelled (in reference to German law) *pandekt*. Pl. **pandects, pandectae**. See CORPUS JURIS CIVILIS.

**pander, n.** One who engages in pandering. — Also termed *panderer*. See PIMP.

**pandering** (**pan-dar-ing**), *n.* **1.** The act or offense of recruiting a prostitute, finding a place of business for a prostitute, or soliciting customers for a prostitute. — Also termed *promoting prostitution*. **2.** The act or offense of selling or distributing textual or visual material (such as magazines or videotapes) openly advertised to appeal to the recipient's sexual interest. • Although the concept of pandering was invoked by the U.S. Supreme Court in *Ginzburg v. United States*, 383 U.S. 463, 86 S.Ct. 942 (1966), it has seldom been discussed by the Court since then. — **pander, vb.**

**P & L. abbr.** Profit and loss. See INCOME STATEMENT.

**panel. 1.** A list of persons summoned as potential jurors. **2.** A group of persons selected for jury duty; VENIRE. **3.** A set of judges selected from a complete court to decide a specific case; esp., a group of three judges designated to sit for an appellate court.

**panelation** (**pan-əl-ay-shən**). The act of empanelling a jury. — Also spelled *panellation*.

**panel-shopping.** The practice of choosing the most favorable group of judges to hear an appeal.

**papal law** (**pay-pəl**). See CANON LAW.

**paper. 1.** Any written or printed document or instrument. **2.** A negotiable document or instrument evidencing a debt; esp., commercial documents or negotiable instruments considered as a group. See NEGOTIABLE INSTRUMENT. **3.** (*pl.*) COURT PAPERS.

**accommodation paper.** See ACCOMMODATION PAPER.

**bankable paper.** Notes, checks, bank bills, drafts, and other instruments received as cash by banks.

**bearer paper.** An instrument payable to the person who holds it rather than to the order of a specific person. • Bearer paper is negotiated simply by delivering the instrument to a transferee. — Also termed *bearer document*; *bearer instrument*.

**chattel paper** (**chat-əl**). See CHATTEL PAPER.

**commercial paper. 1.** An instrument, other than cash, for the payment of money. • Commercial paper — typically existing in the form of a draft (such as a check) or a note (such as a certificate of deposit) — is governed by Article 3 of the UCC. But even though the UCC uses the term *commercial paper* when referring to negotiable instruments of a particular kind (drafts, checks, certificates of deposit, and notes as defined by Article 3), the term long predates the UCC as a business and legal term in common use. Before the UCC, it was generally viewed as synonymous with *negotiable paper* or *bills and notes*. It was sometimes applied even to nonnegotiable instruments. — Also termed *mercantile paper*. See NEGOTIABLE INSTRUMENT.

“Commercial paper” is rather a popular than a technical expression, often used, however, both in statutes and in decisions of courts, to designate those simple forms of contract long recognized in the world's commerce and governed by the law merchant.” 1 Joseph F. Randolph, *A Treatise on the Law of Commercial Paper* § 1, at 1 (2d ed. 1899).

“Defined most broadly, commercial paper refers to any writing embodying rights that are customarily conveyed by transferring the writing. A large subset of commercial paper consists of such writings that are negotiable, which means that the law enables a transferee to acquire the embodied rights free of claims and defenses against the transferor.” Richard E. Speidel, *Negotiable Instruments and Check Collection in a Nutshell* 1 (4th ed. 1993).

**2.** Such instruments collectively. — Also termed *bills and notes*. **3.** Loosely, a short-term unsecured promissory note, usu. issued and sold by one company to meet another company's immediate cash needs.

**commodity paper.** An instrument representing a loan secured by a bill of lading or warehouse receipt.

**order paper.** An instrument payable to a specific payee or to any person that the payee designates. — Also termed *order document*; *order instrument*.

**paper loss.** See LOSS.

**paper money.** See MONEY.

**paper patent.** See PATENT (3).

**paper profit.** See PROFIT.

**paper standard.** A monetary system based entirely on paper; a system of currency that is not convertible into gold or other precious metal. Cf. GOLD STANDARD.

**paper street.** A thoroughfare that appears on plats, subdivision maps, and other publicly filed documents, but that has not been completed or opened for public use.

**paper title.** See TITLE (2).

**Papian law.** See LEX PAPIA POPPEA.

**par.** See PAR VALUE.

**parage (par-ij), n.** [Law French] *Hist.* Equality of condition, blood, or dignity; esp., the equal tenure in land existing among the nobility who inherit from a common ancestor. — Also termed *paragium*. Cf. DISPARAGARE (2).

**paragium (pə-ray-jee-əm).** [Law Latin] PARAGE.

**parajudge.** See UNITED STATES MAGISTRATE JUDGE.

**paralegal, n.** A person who assists a lawyer in duties related to the practice of law but who is not a licensed attorney. — Also termed *legal assistant*; *legal analyst*. — **paralegal, adj.**

**paralegalize, vb.** *Slang.* To proofread, cite-check, and otherwise double-check the details in (a legal document).

**parallel citation.** See CITATION.

**parallel imports.** Goods bearing valid trademarks that are manufactured abroad and imported into the United States to compete with domestically manufactured goods bearing the same valid trademarks. • Domestic parties commonly complain that parallel imports compete unfairly in the U.S. market. But U.S. trademark law does not prohibit the sale of most parallel imports. — Also termed *gray-market goods*. See *gray market* under MARKET.

**paramount title.** See TITLE (2).

**paraph (par-əf), n.** **1.** *Hist.* A flourish that follows a signature, intended as a safeguard against forgery. **2.** *Civil law.* A signature itself; esp., a notary public's signature on a document, followed by the date, names of the parties, and seal.

**paraph (par-əf), vb.** *Civil law.* To add a paraph to <paraphed the contract>.

**parapherna (par-ə-fər-nə).** [Greek "things brought on the side"] *Roman law.* Property of a wife not forming part of her dowry. See DOS (1).

**paraphernalia (par-ə-fər-nay-lee-ə).** *Hist.* Property that a wife was allowed to keep, in addition to her dowry, on the death of her husband.

"[I]n one particular instance the wife may acquire a property in some of her husband's goods: which shall remain to her after his death and not go to the executors. These are called her *paraphernalia*, which is a term borrowed from the civil law ... signifying something over and above her dower." 2 William Blackstone, *Commentaries on the Laws of England* 435-36 (1765).

**paraphernal property.** See EXTRADOTAL PROPERTY.

**Paraphrase of Theophilus.** See INSTITUTE (4).

**paratitla (par-ə-tīt-lə), n. pl.** [Law Latin] *Roman & civil law.* Notes or abstracts prefixed to titles of law, giving a summary of their contents.

**paratum habeo (pə-ray-təm hay-bee-oh).** [Law Latin "I have him in readiness"] *Hist.* A sheriff's return of a *capias ad respondendum*, signifying that the defendant is ready to be brought to court.

**paratus est verificare (pə-ray-təs est ver-ə-fi-kair-ee).** [Law Latin] He is ready to verify. •

This phrase formerly concluded a verified pleading.

**paravail** (par-ə-vayl or par-ə-vayl), *adj.* [Law French “at the bottom”] *Hist.* (Of a tenant) holding of another tenant.

**parcel**, *n.* **1.** A small package or bundle. **2.** A tract of land.

**parcel**, *vb.* To divide and distribute (goods, land, etc.) <Alex parceled out the inheritance>.

**parcenary** (pahr-sə-ner-ee). See COPARCENARY.

**parcener** (pahr-sə-nər). See COPARCENER.

**parco fracto** (pahr-koh frak-toh). See DE PARCO FRACTO.

**par delictum** (pahr di-lik-təm). [Latin] Equal guilt; equal wrong.

**pardon**, *n.* The act or an instance of officially nullifying punishment or other legal consequences of a crime. ● A pardon is usu. granted by the chief executive of a government <the President has the sole power to issue pardons for federal offenses, while state governors have the power to issue pardons for state crimes>. — Also termed *executive pardon*. — **pardon**, *vb.* See CLEMENCY. Cf. COMMUTATION (2); REPRIEVE.

**absolute pardon.** A pardon that releases the wrongdoer from punishment and restores the offender’s civil rights without qualification. — Also termed *full pardon*; *unconditional pardon*.

**conditional pardon.** A pardon that does not become effective until the wrongdoer satisfies a prerequisite or that will be revoked upon the occurrence of some specified act.

**general pardon.** See AMNESTY.

**partial pardon.** A pardon that exonerates the offender from some but not all of the punishment or legal consequences of a crime.

**pardon attorney.** A Justice Department lawyer who considers applications for federal pardons and forwards those of promising candidates for review by the President.

**parens binubus** (par-enz bi-n[y]oo-bəs). [Latin “twice-married parent”] *Roman law.* A parent who has remarried.

## Parental Kidnapping Prevention Act

**parens patriae** (par-enz pay-tree-ee or pa-tree-i). [Latin “parent of his or her country”] **1.** The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves <the attorney general acted as *parens patriae* in the administrative hearing>. **2.** A doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a legal disability to prosecute the suit <*parens patriae* allowed the state to institute proceedings>. ● The state ordinarily has no standing to sue on behalf of its citizens, unless a separate, sovereign interest will be served by the suit. — Also termed *doctrine of parens patriae*.

**parent. 1.** The lawful father or mother of someone. ● In ordinary usage, the term denotes more than responsibility for conception and birth. The term commonly includes (1) either the natural father or the natural mother of a child, (2) the adoptive father or adoptive mother of a child, (3) a child’s putative blood parent who has expressly acknowledged paternity, and (4) an individual or agency whose status as guardian has been established by judicial decree. In law, parental status based on any criterion may be terminated by judicial decree.

**adoptive parent.** A parent by virtue of legal adoption. See ADOPTION (1).

**foster parent.** An adult who, though without blood ties or legal ties, cares for and rears a child, esp. an orphaned or neglected child that might otherwise be deprived of nurture.

● Foster parents sometimes give care and support temporarily until a child is legally adopted by others.

**2.** See *parent corporation* under CORPORATION.

**parentage** (pair-ən-tij or par-). The state or condition of being a parent; kindred in the direct ascending line.

**parentage action.** See PATERNITY SUIT.

**parental consortium.** See CONSORTIUM.

**parental immunity.** See IMMUNITY (2).

**parental kidnapping.** See KIDNAPPING.

**Parental Kidnapping Prevention Act.** A federal law, enacted in 1980, providing a penalty for child-kidnapping by a noncustodial parent and requiring a state to recognize and enforce a child-custody order rendered by a court of another state. 28 USCA § 1738A; 42 USCA

§§ 654, 655, 663. — Abbr. PKPA. Cf. UNIFORM CHILD CUSTODY JURISDICTION ACT.

**parental-liability law.** A statute obliging parents to pay damages for torts (esp. intentional ones) committed by their minor children. • All states have these laws, but most limit the parents' liability to about \$3,000 per tort.

**parental-preference doctrine.** The principle that a fit parent, who is willing and able to care for a minor child, should be granted custody instead of someone who is not the child's parent. — Also termed *parental-presumption rule*.

**parental-responsibility statute.** A law imposing criminal sanctions (such as fines) on parents whose minor children commit crimes as a result of the parents' failure to exercise sufficient control over them. — Also termed *control-your-kid law*.

**parental rights.** A parent's rights concerning his or her child, including the right to educate and discipline the child and the right to control the child's earnings and property.

**parent-child immunity.** See *parental immunity* under IMMUNITY (2).

**parent company.** See *parent corporation* under CORPORATION.

**parent corporation.** See CORPORATION.

**parentela** (par-ən-tee-lə), *n. pl.* [Law Latin] Persons who can trace descent from a common ancestor.

**parentelic method** (par-ən-tee-lik or -tel-ik). A scheme of computation used to determine the paternal or maternal collaterals entitled to inherit.

**parenticide** (pə-ren-tə-sid). **1.** The act of murdering one's parent. **2.** A person who murders his or her parent.

**pares curiae** (par-eez kyoor-ee-ee). [Law Latin "peers of the court"] *Hist.* A lord's tenants who sat in judgment of a fellow tenant.

**pares regni** (par-eez reg-nī). [Law Latin] *Hist.* Peers of the realm.

**Pareto optimality** (pə-ray-toh or pə-ret-oh), *n.* An economic situation in which no person can be made better off without making someone

else worse off. • The term derives from the work of Vilfredo Pareto (1848–1923), an Italian economist and sociologist. — **Pareto-optimal**, *adj.*

**Pareto superiority**, *n.* An economic situation in which an exchange can be made that benefits someone and injures no one. • When such an exchange can no longer be made, the situation becomes one of Pareto optimality. — **Pareto-superior**, *adj.*

**pari causa, in.** See IN PARI CAUSA.

**pari delicto, in.** See IN PARI DELICTO.

**paries communis** (pair-ee-eez kə-myoo-nis). [Latin] A common wall; a party wall.

**pari materia, in.** See IN PARI MATERIA.

**parimutuel betting** (par-i-myoo-choo-əl). A system of gambling in which bets placed on a race are pooled and then paid (less a management fee and taxes) to those holding winning tickets.

**pari passu** (pahr-ee pahs-oo or pair-I, pair-ee, or par-ee pas-[y]oo). [Latin "by equal step"] Proportionally; at an equal pace; without preference <creditors of a bankrupt estate will receive distributions *pari passu*>.

**pari ratiōne** (pair-I ray-shee-oh-nee or rash-ee-oh-nee). [Latin] *Roman & civil law.* For the like reason; by like mode of reasoning.

**parish. 1.** In Louisiana, a governmental subdivision analogous to a county in other U.S. states. **2. Eccles. law.** A division of a town or district, subject to the ministry of one pastor.

**district parish.** *Eccles. law.* A geographical division of an English parish made by the Crown's commissioners for the building of new churches for worship, celebration of marriages, christenings, and burials.

**parish court.** See *county court* under COURT.

**par item.** See ITEM.

**parium iudicium** (pair-ee-əm joo-dish-ee-əm). [Law Latin] The judgment of peers; trial by a jury of one's peers or equals.

**Parker doctrine.** See STATE-ACTION DOCTRINE.

**parking. 1.** The sale of securities subject to an agreement that the seller will buy them back at a later time for a similar price. • Parking is illegal if done to circumvent securities regulations or tax laws. It is often a method of evading the net-capital requirements of the National Association of Securities Dealers (NASD), which requires a brokerage firm to discount the value of any stock it holds in its own account when it files its monthly report about its net-capital condition. To reach technical compliance with the NASD's net-capital requirements, a brokerage firm "sells" stock from its own account to a customer at market price, thereby avoiding the discount for reporting purposes. Having filed its report, it can then "buy" the shares back from the customer, usu. at the same price at which it "sold" the stock, plus interest. **2.** The placement of assets in a safe, short-term investment while other investment opportunities are being considered. — Also termed (in sense 1) *stock-parking*.

**parking-lot rule.** The principle that workers' compensation insurance covers the injuries suffered by an employee on the employer's premises when the employee is arriving at or leaving work. — Also termed *premises rule*.

**parliament.** The supreme legislative body of some nations; esp. (*cap.*), in the United Kingdom, the national legislature consisting of the monarch, the House of Lords, and the House of Commons.

**parliamentary diplomacy.** See DIPLOMACY.

**parliamentary divorce.** See DIVORCE.

**parliamentary intent.** See LEGISLATIVE INTENT.

**parliamentary law.** The body of rules and precedents governing the proceedings of legislative and deliberative assemblies.

**parliamentary privilege.** See PRIVILEGE (1); *legislative privilege* under PRIVILEGE (3).

**parliamentum insanum.** See MAD PARLIAMENT.

**par of exchange.** The equality of a given sum of one country's currency and the like sum of money of a foreign country into which it is to be exchanged.

**parol** (pə-rohl or par-əl), *adj.* **1.** Oral; unwritten <parol evidence>. **2.** Not under seal <parol contract>.

**parol** (pə-rohl or par-əl), *n.* **1.** An oral statement or declaration. **2. Hist.** The oral pleadings in a case.

"Anciently pleadings were conducted in court orally, and the whole pleadings were called the parol; but for centuries the pleadings in civil actions have been required to be in writing." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 178-79 (2d ed. 1899).

**parol agreement.** See *parol contract* (1) under CONTRACT.

**parol arrest.** See ARREST.

**parol contract.** See CONTRACT.

**parol demurrer.** See DEMURRER.

**parole** (pə-rohl), *n.* The release of a prisoner from imprisonment before the full sentence has been served. • Although not available under some sentences, parole is usu. granted for good behavior on the condition that the parolee regularly report to a supervising officer for a specified period. — **parole**, *vb.* Cf. PARDON; PROBATION (1).

"The essence of parole is release from prison, before completion of the sentence, on condition that the prisoner abide by certain rules during the balance of the sentence. Parole is not freedom." 59 Am. Jur. 2d *Pardon and Parole* § 6 (1987).

**juvenile parole.** The conditional release of a juvenile offender from confinement. — Also termed *aftercare*.

**parole board.** A governmental body that decides whether prisoners may be released from prison before completing their sentences. — Also termed *board of parole*; *parole commission*.

**parolee** (pə-roh-lee). A prisoner who is released on parole.

**parole revocation.** The administrative act of returning a parolee to prison because of the parolee's failure to abide by the conditions of parole (as by committing a new offense).

**parol evidence.** See EVIDENCE.

**parol-evidence rule.** *Contracts.* The principle that a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence that adds to, varies, or contradicts the writing. • This rule usu. operates to prevent a party from introducing extrinsic evidence of negotiations that occurred be-

fore or while the agreement was being reduced to its final written form. See INTEGRATION (2); MERGER (2). Cf. FOUR-CORNERS RULE.

"The basic principle is often called the 'parol evidence rule', and according to this rule evidence is not admissible to contradict or qualify a complete written contract. The rule is usually stated in the form of a rule of evidence, but it is probably best regarded as a rule of substantive law. The question is not really whether evidence can be admitted which might vary the written document, but whether, if the evidence is admitted, it will have the legal effect of varying the document." P.S. Atiyah, *An Introduction to the Law of Contract* 161-62 (3d ed. 1981).

"The parol evidence rule assumes that the formal writing reflects the parties' minds at a point of maximum resolution and, hence, that duties and restrictions that do not appear in the written document, even though apparently accepted at an earlier stage, were not intended by the parties to survive. In addition, and quite apart from the survival of matters discarded in the course of negotiations, there is the obvious danger of outright fraud." Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 82-83 (1990).

**parol lease.** See LEASE.

**parols de ley** (pə-rohlz də lay). [Law French] Words of law; technical words.

**parol trust.** See *oral trust* under TRUST.

**Parratt-Hudson doctrine.** The principle that a state actor's random, unauthorized deprivation of someone's property does not amount to a due-process violation if the state provides an adequate postdeprivation remedy. *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1984); *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984).

**parricide** (par-ə-sid), *n.* **1.** The act of killing a close relative, esp. a parent. **2.** One who kills such a relative. — **parricidal**, *adj.* Cf. PATRICIDE.

**pars** (pahrz). [Latin] *Hist.* A party to an action.

**pars enitia** (pahrz i-ni-shee-ə). [Law Latin "oldest's part"] *Hist.* An oldest child's portion of lands divided by lot.

**parson.** See RECTOR (1).

**pars rea** (pahrz ree-ə). A party defendant.

**parte inaudita** (pahr-tee in-aw-dy-tə or in-aw-di-tə). [Latin "one side being unheard"] Of or relating to action taken ex parte.

**parte non comparente** (pahr-tee non kom-pə-ren-tee). [Latin] The party not having appeared.

**partes finis nihil habuerunt** (pahr-teez fi-nis ni-hil hab-yoo-eer-ənt). [Law Latin "the parties to the fine had nothing"] *Hist.* A plea to set aside a conveyance of land on grounds that the transferor did not have a sufficient ownership interest in the property to alienate it.

"Yet where a *stranger* . . . officiously interferes in an estate which in nowise belongs to him, his fine is of no effect; and may at any time be set aside . . . by pleading that '*partes finis nihil habuerunt.*'" 2 William Blackstone, *Commentaries on the Laws of England* 356-57 (1765).

**partial account.** A preliminary accounting of an executor's or administrator's dealings with an estate.

**partial assignment.** See ASSIGNMENT (2).

**partial average.** See *particular average* under AVERAGE.

**partial breach.** See BREACH OF CONTRACT.

**partial defense.** See DEFENSE (1).

**partial dependent.** See DEPENDENT.

**partial disability.** See DISABILITY (1).

**partial eviction.** See EVICTION.

**partial evidence.** See EVIDENCE.

**partial failure of consideration.** See FAILURE OF CONSIDERATION.

**partial guardian.** See GUARDIAN.

**partial integration.** See INTEGRATION (2).

**partial limitation.** *Insurance.* A policy provision in which the insurer agrees to pay a total loss if the actual loss exceeds a specified amount.

**partial liquidation.** See LIQUIDATION.

**partial loss.** See LOSS.

**partially disclosed principal.** See PRINCIPAL (1).



**partially integrated contract.** See INTEGRATED CONTRACT.

**partial pardon.** See PARDON.

**partial release.** See RELEASE.

**partial summary judgment.** See SUMMARY JUDGMENT.

**partial verdict.** See VERDICT.

**partial zoning.** See ZONING.

**partiarus** (pahr-shee-air-ee-əs), *n.* [Latin] *Roman law*. **1.** A legatee entitled to a portion of an inheritance along with the appointed heirs. **2.** A tenant who is bound to hand over a portion of the crop in lieu of rent.

**particeps** (pahr-tə-seps), *n.* [Latin] **1.** A participant. **2.** A part owner.

**particeps criminis** (pahr-tə-seps krim-ə-nis), *n.* [Latin "partner in crime"] **1.** An accomplice or accessory. Pl. **participes criminis** (pahr-tis-ə-pee-z). See ACCESSORY.

"Even in felonies but little practical importance now attaches to the distinctions between the first three of these four classes of 'accomplices' — a term which the law applies to all the *participes criminis*, whatever their degree of 'complicity' in the offence, though popular use generally limits it to those who take only a minor part. For the maximum punishment prescribed for any given crime is the same in the case of all three classes." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 90 (16th ed. 1952).

**2.** The doctrine that one participant in an unlawful activity cannot recover in a civil action against another participant in the activity.

• This is a civil doctrine only, having nothing to do with criminal responsibility.

**participating bond.** See BOND (3).

**participating insurance.** See INSURANCE.

**participating policy.** See INSURANCE POLICY.

**participating preferred stock.** See STOCK.

**participation, n.** **1.** The act of taking part in something, such as a partnership. **2.** The right of employees to receive part of a business's profits; profit-sharing. — **participate, vb.**

**participation loan.** See LOAN.

**participation mortgage.** See MORTGAGE.

**participation stock.** See STOCK.

**particular average.** See AVERAGE.

**particular average loss.** See LOSS.

**particular custom.** See *local custom* under CUSTOM.

**particular damages.** See *special damages* under DAMAGES.

**particular estate.** See ESTATE.

**particular jurisprudence.** See JURISPRUDENCE.

**particular lien.** See LIEN.

**particular malice.** See MALICE.

**particular partnership.** See PARTNERSHIP.

**particulars, bill of.** See BILL OF PARTICULARS.

**particulars of sale.** A document that describes the various features of a thing (such as a house) that is for sale.

**particular successor.** See SUCCESSOR.

**particular tenant.** See TENANT.

**particular title.** See TITLE (2).

**partitio** (pahr-tish-ee-oh), *n.* [Latin] *Roman law*. Division; partition.

**partitio legata** (pahr-tish-ee-oh læ-gay-tə). [Latin] A directive from a testator to an heir to divide the inheritance and deliver a designated portion to a named legatee; a testamentary partition.

**partition, n.** **1.** Something that separates one part of a space from another. **2.** The act of dividing; esp., the division of real property held jointly or in common by two or more persons into individually owned interests. — **partition, vb.** — **partible, adj.**

**definitive partition.** A partition that is irrevocable.

**provisional partition.** A temporary partition, often made before the remainder of the property can be divided.

**partner. 1.** One who shares or takes part with another, esp. in a venture with shared benefits and shared risks; an associate or colleague <partners in crime>. **2.** One of two or more persons who jointly own and carry on a business for profit <the firm and its partners were sued for malpractice>. See PARTNERSHIP. **3.** One of two persons who are married or who live together; a spouse or companion <my partner in life>.

**dormant partner.** See *silent partner*.

**general partner.** A partner who ordinarily takes part in the daily operations of the business, shares in the profits and losses, and is personally responsible for the partnership's debts and liabilities. — Also termed *full partner*.

**junior partner.** A partner whose participation is limited with respect to both profits and management.

**limited partner.** A partner who receives profits from the business but does not take part in managing the business and is not liable for any amount greater than his or her original investment. — Also termed *special partner*; (in civil law) *partner in commendam*. See *limited partnership* under PARTNERSHIP.

**liquidating partner.** The partner appointed to settle the accounts, collect the assets, adjust the claims, and pay the debts of a dissolving or insolvent firm.

**name partner.** A partner whose name appears in the name of the partnership <Mr. Tibbs is a name partner in the accounting firm of Gibbs & Tibbs>. — Also termed *named partner*; *title member*.

**nominal partner.** A person who is held out as a partner in a firm or business but who has no actual interest in the partnership. — Also termed *ostensible partner*; *partner by estoppel*.

**partner in commendam** (in kə-men-dəm). See *limited partner*.

**quasi-partner.** A person who joins others in an enterprise that appears to be, but is not, a partnership. ● A joint adventurer, for example, is a quasi-partner.

**secret partner.** A partner whose connection with the firm is concealed from the public. — Also termed *sleeping partner*.

**senior partner.** A high-ranking partner, as in a law firm.

**silent partner.** A partner who shares in the profits but who has no active voice in management of the firm and whose existence is

often not publicly disclosed. — Also termed *dormant partner*.

**sleeping partner.** See *secret partner*.

**special partner.** See *limited partner*.

**surviving partner.** The partner who, upon the partnership's dissolution because of another partner's death, serves as a trustee to administer the firm's remaining affairs.

**partner in commendam.** See *limited partner* under PARTNER.

**partnership.** A voluntary association of two or more persons who jointly own and carry on a business for profit. ● Under the Uniform Partnership Act, a partnership is presumed to exist if the persons agree to share proportionally the business's profits or losses. Cf. JOINT VENTURE; STRATEGIC ALLIANCE.

**collapsible partnership.** *Tax.* A partnership formed by partners who intend to dissolve it before they realize any income. ● Any partner's gain resulting from unrealized receivables or inventory that has increased substantially in value will be treated by the IRS as ordinary income rather than as capital gain. IRC (26 USCA) § 751. Cf. *collapsible corporation* under CORPORATION.

**commercial partnership.** See *trading partnership*.

**family partnership.** See FAMILY PARTNERSHIP.

**general partnership.** A partnership in which all partners participate fully in running the business and share equally in profits and losses (though the partners' monetary contributions may vary).

**implied partnership.** See *partnership by estoppel*.

**limited-liability partnership.** A partnership in which a partner is not liable for a negligent act committed by another partner or by an employee not under the partner's supervision. ● All states have enacted statutes that allow a business (typically a law firm or accounting firm) to register as this type of partnership. — Abbr. L.L.P.

**limited partnership.** A partnership composed of one or more persons who control the business and are personally liable for the partnership's debts (called *general partners*), and one or more persons who contribute capital and share profits but who cannot manage the business and are liable only for the amount of their contribution (called *limited partners*). ● The chief purpose of a limited

partnership is to enable persons to invest their money in a business without taking an active part in managing the business, and without risking more than the sum originally contributed, while securing the cooperation of others who have ability and integrity but insufficient money. — Abbr. L.P. — Also termed *special partnership*; (in civil law) *partnership in commendam*.

"Unknown at common law, the limited partnership was derived from the *commenda* or *societe en commandite* of continental Europe to permit a person to invest and share in the profits of a partnership business and yet limit one's liability to one's investment. It was first recognized in the United States by a New York statute of 1822. It is now recognized by statute in all American jurisdictions." Henry G. Henn & John R. Alexander, *Laws of Corporations* § 28, at 86 (3d ed. 1983).

"[T]he two primary characteristics of a limited partnership [are] liability of limited partners only for their agreed contributions, and a hierarchical structure with management in one or more general partners and very little power or authority in the limited partners. Thus, limited partners are typically — although not necessarily — passive contributors of capital. . . . In this respect they resemble shareholders in a corporation, but, depending on the details of the organizational documents, they may have greater or lesser rights." 3 Alan R. Bromberg & Larry E. Ribstein, *Bromberg and Ribstein on Partnerships* § 12.01, at 12:5–12:6 (1999).

**master limited partnership.** A limited partnership whose interests or shares are publicly traded. See *publicly traded partnership*.

**nontrading partnership.** A partnership that does not buy and sell but instead is a partnership of employment or occupation. — Also termed *noncommercial partnership*.

**particular partnership.** A partnership in which the members unite to share the benefits of a single transaction or enterprise.

**partnership at will.** A partnership that any partner may dissolve at any time without thereby incurring liability. Cf. *partnership for a term*.

**partnership by estoppel.** A partnership implied by law when one or more persons represent themselves as partners to a third party who relies on that representation. ● A person who is deemed a partner by estoppel becomes liable for any credit extended to the partnership by the third party. — Also termed *implied partnership*.

**partnership for a term.** A partnership that exists for a specified duration or until a specified event occurs. ● Such a partnership can be prematurely dissolved by any partner, but that partner may be held liable for breach of

the partnership agreement. Cf. *partnership at will*.

**partnership in commendam.** See *limited partnership*.

**publicly traded partnership.** A partnership whose interests are traded either over-the-counter or on a securities exchange. ● These partnerships are treated as corporations for income-tax purposes. — Abbr. PTP.

**special partnership. 1.** See *limited partnership. 2.* A partnership formed only for a single venture.

**subpartnership.** An arrangement between a firm's partner and a nonpartner to share the partner's profits and losses in the firm's business, but without forming a legal partnership between the partner and the nonpartner.

**tiered partnership.** An ownership arrangement consisting of one parent partnership that is a partner in one or more subsidiary partnerships.

**trading partnership.** A partnership whose usual business involves buying and selling. — Also termed *commercial partnership*.

**umbrella limited partnership.** A limited partnership used by a real-estate investment trust to acquire investment properties in exchange for shares in the partnership. See *umbrella partnership real-estate investment trust* under REAL-ESTATE INVESTMENT TRUST.

**universal partnership.** A partnership formed by persons who agree to contribute all their individually owned property — and to devote all their skill, labor, and services — to the partnership.

**partnership agreement.** A contract defining the partners' rights and duties toward one another — not the partners' relationship with third parties. — Also termed *articles of partnership*.

**partnership association.** A business organization that combines the features of a limited partnership and a close corporation. ● Partnership associations are statutorily recognized in only a few states. — Also termed *statutory partnership association*; *limited partnership association*.

**partnership at will.** See PARTNERSHIP.

**partnership by estoppel.** See PARTNERSHIP.

**partnership certificate.** A document that evidences the participation of the partners in a

partnership. • The certificate is often furnished to financial institutions when the partnership borrows money.

**partnership distribution.** See DISTRIBUTION.

**partnership for a term.** See PARTNERSHIP.

**partnership in commendam.** See *limited partnership* under PARTNERSHIP.

**partnership insurance.** See INSURANCE.

**partner's lien.** A partner's right to have the partnership property applied in payment of the partnership's debts and to have whatever is due the firm from fellow partners deducted from what would otherwise be payable to them for their shares.

**part payment.** A buyer's delivery of money or other thing of value to the seller, and its acceptance by the seller, when the money or the value of the thing does not equal the full sum owed.

**part performance.** 1. The accomplishment of some but not all of one's contractual obligations. 2. A party's execution, in reliance on an opposing party's oral promise, of enough of an oral contract's requirements that a court may hold the statute of frauds not to apply. 3. PART-PERFORMANCE DOCTRINE.

**part-performance doctrine.** The equitable principle by which a failure to comply with the statute of frauds is overcome by a party's execution, in reliance on an opposing party's oral promise, of an oral contract's requirements. — Sometimes shortened to *part performance*.

“Part performance is not an accurate designation of such acts as taking possession and making improvements when the contract does not provide for such acts, but such acts regularly bring the doctrine into play. The doctrine is contrary to the words of the Statute of Frauds, but it was established by English courts of equity soon after the enactment of the Statute. Payment of purchase-money, without more, was once thought sufficient to justify specific enforcement, but a contrary view now prevails, since in such cases restitution is an adequate remedy. English decisions treated a transfer of possession of the land as sufficient, if unequivocally referable to the oral agreement, apparently on the ground that the promise to transfer had been executed by a common-law conveyance. Such decisions are not generally followed in the United States. Enforcement has instead been justified on the ground that repudiation after ‘part performance’ amounts to a ‘virtual fraud.’ A more accurate statement is that courts with equitable powers are vested by tradition with what in substance is

a dispensing power based on the promisee's reliance, a discretion to be exercised with caution in the light of all the circumstances.” Restatement (Second) of Contracts § 129 cmt. a (1981).

**part-sovereign state.** See SOVEREIGN STATE.

**party. 1.** One who takes part in a transaction <a party to the contract>.

“Note, that if an Indenture be made between two as Parties thereto in the Beginning, and in the Deed one of them grants or lets a Thing to another who is not named in the Beginning, he is not Party to the Deed, nor shall take any Thing thereby.” John Rastell, *Les Termes de la Ley* 471 (26th ed. 1721).

“A person who takes part in a legal transaction or proceeding is said to be a party to it. Thus, if an agreement, conveyance, lease, or the like, is entered into between A. and B., they are said to be parties to it; and the same expression is often, though not very correctly, applied to the persons named as the grantors or releasors in a deed-poll.” 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 930 (1883).

**party of the first part.** *Archaic.* The party named first in a contract; esp., the owner or seller.

**party of the second part.** *Archaic.* The party named second in a contract; esp., the buyer.

**2.** One by or against whom a lawsuit is brought <a party to the lawsuit>.

**adverse party.** A party whose interests are opposed to the interests of another party to the action.

**aggrieved party.** A party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. — Also termed *party aggrieved*; *person aggrieved*.

**formal party.** See *nominal party*.

**indispensable party.** A party who, having interests that would inevitably be affected by a court's judgment, must be included in the case. • If such a party is not included, the case must be dismissed. Fed. R. Civ. P. 19(b). Cf. *necessary party*.

**innocent party.** A party who did not consciously or intentionally participate in an event or transaction.

**interested party.** A party who has a recognizable stake (and therefore standing) in a matter.

**necessary party.** A party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings. See

*compulsory joinder* under JOINDER. Cf. *indispensable party*.

**nominal party.** A party who, having some interest in the subject matter of a lawsuit, will not be affected by any judgment but is nonetheless joined in the lawsuit to avoid procedural defects. • An example is the disinterested stakeholder in a garnishment action. — Also termed *formal party*. Cf. *real party in interest*.

**party aggrieved.** See *aggrieved party*.

**party in interest.** See *real party in interest*.

**party opponent.** An adversary in a legal proceeding. — Sometimes written *party-opponent*.

**party to be charged.** A defendant in an action to enforce a contract falling within the statute of frauds.

**prevailing party.** A party in whose favor a judgment is rendered, regardless of the amount of damages awarded <in certain cases, the court will award attorney's fees to the prevailing party>. — Also termed *successful party*.

**proper party.** A party who may be joined in a case for reasons of judicial economy but whose presence is not essential to the proceeding. See *permissive joinder* under JOINDER.

**real party in interest.** A person entitled under the substantive law to enforce the right sued upon and who generally, but not necessarily, benefits from the action's final outcome. — Also termed *party in interest*; (archaically) *interesse*. Cf. *nominal party*.

"[T]he 'real party in interest' is the party who, by the substantive law, possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery. . . . The concept of real party in interest should not be confused with the concept of standing. The standing question arises in the realm of public law, when governmental action is attacked on the ground that it violates private rights or some constitutional principle. . . . Unfortunately, . . . confusion between standing on the one hand and real party in interest or capacity on the other has been increasing." Charles Alan Wright, *The Law of Federal Courts* § 70, at 490 & n.2 (5th ed. 1994).

**successful party.** See *prevailing party*.

**third party.** See THIRD PARTY.

**party-column ballot.** See BALLOT (4).

**party in interest.** See *real party in interest* under PARTY (2).

**party of the first part.** See PARTY (1).

**party of the second part.** See PARTY (1).

**party opponent.** See PARTY (2).

**party to be charged.** See PARTY (2).

**party wall.** See WALL.

**parum cavisse videtur** (*par-əm kə-vis-ee vī-dee-tər*). [Latin] *Hist.* He seems to have taken too little care; he seems to have been incautious. • This expression was used by a judge when pronouncing a death sentence.

**par value.** The value of an instrument or security as shown on its face; esp., the arbitrary dollar amount assigned to a stock share by the corporate charter, or the principal of a bond. — Often shortened to *par*. — Also termed *face value*; *nominal value*; *stated value*.

"At one time par value had considerable importance because it was widely viewed as the amount for which the shares would be issued: shares with a par value of one hundred dollars could be subscribed for at one hundred dollars per share with confidence that all other identical shares would also be issued for \$100. This practice, however, long ago fell into disuse. Today, par value serves only a minor function and is in no way an indication of the price at which the shares are issued, with this one exception: The one basic rule about setting the price for shares of common stock with a par value is that the price must be equal to or greater than par value." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 109 (3d ed. 1991).

**par-value stock.** See STOCK.

**pass, vb. 1.** To pronounce or render an opinion, ruling, sentence, or judgment <the court refused to pass on the constitutional issue, deciding the case instead on procedural grounds>. **2.** To transfer or be transferred <the woman's will passes title to the house to her nephew, much to her husband's surprise> <title passed when the nephew received the deed>. **3.** To enact (a legislative bill or resolution) <Congress has debated whether to pass a balanced-budget amendment to the Constitution>. **4.** To approve or certify (something) as meeting specified requirements <the mechanic informed her that the car had passed inspection>. **5.** To publish, transfer, or circulate (a thing, often a forgery) <he was found guilty of passing counterfeit bills>. **6.** To forgo or proceed beyond <the case was passed on the court's trial docket because the judge was presiding over a criminal trial>.

**passage, n. 1.** The passing of a legislative measure into law. **2.** A right, privilege, or permis-

sion to pass over land or water; an easement to travel through another's property.

**pass-along, *adj.*** See PASS-THROUGH.

**passbook.** A depositor's book in which a bank records all the transactions on an account. — Also termed *bankbook*.

**passed dividend.** See DIVIDEND.

**passim (pas-im), *adv.*** [Latin] Here and there; throughout (the cited work). • In modern legal writing, the citation signal *see generally* is preferred to *passim* as a general reference, although *passim* can be useful in a brief's index of authorities to show that a given authority is cited throughout the brief.

**passing off, *n.*** The act or an instance of falsely representing one's own product as that of another in an attempt to deceive potential buyers. • Passing off is actionable in tort under the law of unfair competition. — Also termed *palming off*. — **pass off, *vb.*** Cf. MISAPPROPRIATION.

**passive, *adj.*** Not involving active participation; esp., of or relating to a business enterprise in which an investor does not have immediate control over the activity that produces income.

**passive activity. *Tax.*** A business activity in which the taxpayer does not materially participate and therefore does not have immediate control over the income. • A typical example is the ownership and rental of real property by someone not in the real-property business.

**passive bond.** See BOND (3).

**passive breach of contract.** See BREACH OF CONTRACT.

**passive concealment.** See CONCEALMENT.

**passive debt.** See DEBT.

**passive duty.** See *negative duty* under DUTY (1).

**passive euthanasia.** See EUTHANASIA.

**passive income.** See INCOME.

**passive investment income.** See INCOME.

**passive loss.** See LOSS.

**passive negligence.** See NEGLIGENCE.

**passive trust.** See TRUST.

**passport. 1.** A formal document certifying a person's identity and citizenship so that the person may travel to and from a foreign country. **2.** See SEA LETTER.

**pass the witness.** See TAKE THE WITNESS.

**pass-through, *adj.*** (Of a seller's or lessor's costs) chargeable to the buyer or lessee. — Also termed *pass-along*.

**pass-through security.** See SECURITY.

**pass-through taxation.** See TAXATION.

**past consideration.** See CONSIDERATION.

**past recollection recorded. *Evidence.*** A document concerning events that a witness once knew about but can no longer remember. • The document itself is evidence and, despite being hearsay, may be admitted (or read into the record) if it was prepared or adopted by the witness when the events were fresh in the witness's memory. Fed. R. Evid. 803(5). — Also termed *recorded recollection*; *past recorded recollection*. Cf. PRESENT RECOLLECTION REFRESHED.

**Pasula-Robinette test.** The principle that if a miner establishes a prima facie case of retaliation for filing a claim under the Mine Safety and Health Act, the mine operator can still prevail by proving, as an affirmative defense, that (1) the miner did not engage in a protected activity, (2) the adverse action was based on the miner's unprotected activity, and (3) the mine operator would have taken the same action based solely on the unprotected activity. • To establish a prima facie case of retaliation, the evidence must show that the miner engaged in a protected activity and that an adverse employment action occurred based at least in part on that activity. 30 USCA § 815(c); *Secretary ex rel. Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786 (1980); *Secretary ex rel. Robinette v. United Coal Co.*, 3 FMSHRC 802 (1981).

**pat-down, *n.*** See FRISK.

**pateat universis per praesentes (pat-ee-at yoo-nə-vər-sis pər pri-zen-teez).** [Law Latin] Let it be open to all men by these presents. Cf.

KNOW ALL MEN BY THESE PRESENTS; NOVERINT  
UNIVERSI PER PRAESENTES.

**Pate hearing.** A proceeding in which the trial court seeks to determine whether a criminal defendant is competent to stand trial. *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836 (1966); 18 USCA § 4241. — Also termed *competency hearing*; *incompetency hearing*.

**patent (pay-tənt)**, *adj.* Obvious; apparent <a patent ambiguity>. Cf. LATENT.

**patent (pat-ənt)**, *n.* **1.** The governmental grant of a right, privilege, or authority. **2.** The official document so granting. — Also termed *public grant*. See LETTERS PATENT.

**call patent.** A land patent in which the corners have been staked but the boundary lines have not been run out at the time of the grant.

**land patent.** An instrument by which the government conveys a grant of public land to a private person.

**lapse patent.** A land patent substituting for an earlier patent to the same land that lapsed because the previous patentee did not claim it.

**3.** The exclusive right to make, use, or sell an invention for a specified period (usu. 17 years), granted by the federal government to the inventor if the device or process is novel, useful, and nonobvious. 35 USCA §§ 101–103.

“What, exactly, is a patent and how does it operate to foster the ‘progress of the useful arts’? In its simplest terms a patent is an agreement between an inventor and the public, represented by the federal government: in return for a full public disclosure of the invention the inventor is granted the right for a fixed period of time to exclude others from making, using, or selling the defined invention in the United States. It is a limited monopoly, designed not primarily to reward the inventor (this may or may not follow), but to encourage a public disclosure of inventions so that after the monopoly expires, the public is free to take unrestricted advantage of the invention.” Earl W. Kintner & Jack L. Lahr, *An Intellectual Property Law Primer* 7–11 (2d ed. 1982).

**basic patent.** A patent granted to an invention recognized by industry or the scientific community as pioneering, unexpected, and unprecedented. — Also termed *pioneer patent*.

**combination patent.** A patent granted for an invention that unites existing components in a novel way.

**design patent.** A patent granted for a new, original, and ornamental design for an article of manufacture; a patent that protects a product’s appearance or nonfunctional aspects. ●

Design patents — which, unlike utility patents, have a term of only 14 years — are similar to copyrights.

**fencing patent.** A patent procured in an effort to broaden the scope of the invention beyond the article or process that is actually intended to be manufactured or licensed. Cf. DOUBLE PATENTING.

**paper patent.** A patent granted for a discovery or invention that has never been used commercially. ● A paper patent receives less protection under the law than a patent granted for a device that is actually used in industry.

**pioneer patent.** See *basic patent*.

**plant patent.** A patent granted for the invention or discovery of a new and distinct variety of asexually reproducing plant.

**process patent.** A patent for a method of treating specified materials to produce a certain result; a patent outlining a means of producing a physical result independently of the producing mechanism. ● The result might be brought about by chemical action, by applying some element or power of nature, by mixing certain substances together, or by heating a substance to a certain temperature.

**reissue patent.** A patent that is issued to correct one or more errors in an original patent, as to revise the specification or to fix an invalid claim. ● A reissue patent replaces the original patent and lasts for the rest of the original patent’s term. 35 USCA § 251. — Sometimes shortened to *reissue*.

“[R]eissue patents are relatively rare, because the push and pull of the patent prosecution process tends to make the claims both accurate and as broad as the U.S. Patent and Trademark Office will allow.” Stephen Elias, *Patent, Copyright and Trademark* 278 (1996).

**utility patent.** A patent granted for one of the following types of inventions: a process, a machine, a manufacture, or a composition of matter (such as a new chemical). ● Utility patents are the most commonly issued patents. 35 USCA § 101.

**patentable**, *adj.* Capable of being patented <patentable processes>.

**patent ambiguity.** See AMBIGUITY.

**Patent and Copyright Clause.** The constitutional provision granting Congress the authority to promote the advancement of science and the arts by establishing a national system for patents and copyrights. U.S. Const. art. I, § 8, cl. 8.

**Patent and Trademark Office.** The Department of Commerce agency that examines patent and trademark applications, issues patents, registers trademarks, and furnishes patent and trademark information and services to the public. — Abbr. PTO.

**patent defect.** See DEFECT.

**patent disclaimer.** See DISCLAIMER.

**patentee** (pat-ən-tee). One who has been granted a patent.

**patent infringement.** See INFRINGEMENT.

**patent insurance.** See INSURANCE.

**patent medicine.** A packaged drug that is protected by trademark and is available without prescription.

**patent of precedence.** *Hist.* A royal grant to barristers that the Crown wished to honor by conferring such rank and preaudience as assigned in the grant.

**patentor** (pat-ən-tər or pat-ən-tor). One who grants a patent.

**patent pending.** The designation given to an invention while the Patent and Trademark Office is processing the patent application. ● No protection against infringement exists, however, unless an actual patent is granted. — Abbr. pat. pend.

**patent pooling.** The cross-licensing of patents among patentholders. ● Patent pooling does not violate antitrust laws unless it is done to suppress competition or control an industry.

**patent right.** See RIGHT.

**patent-right dealer.** A person who sells or brokers the sale of patent rights.

**patent writ.** See WRIT.

**pater** (pay-tər), *n.* [Latin] Father.

**paterfamilias** (pay-tər-fə-mil-ee-əs or pah-tər-), *n.* [Latin] *Roman law.* The male head of a family or household; esp., one invested with *potestas* (power) over another. — Also termed *homo sui juris*. See *patria potestas* under POTESTAS.

**paternal**, *adj.* Of, relating to, or coming from one's father <paternal property>. Cf. MATERNAL.

**paternalism**, *n.* A government's policy or practice of taking responsibility for the individual affairs of its citizens, esp. by supplying their needs or regulating their conduct in a heavy-handed manner. — **paternalistic**, *adj.*

**paternal line.** See LINE.

**paternal-line descent.** See DESCENT.

**paternal property.** See PROPERTY.

**paternity** (pə-tər-ni-tee). The state or condition of being a father, esp. a biological one; fatherhood.

**paternity suit.** A court proceeding to determine whether a person is the father of a child (esp. one born out of wedlock), usu. initiated by the mother in an effort to obtain child support. — Also termed *paternity action*; *parentage action*; *bastardy proceeding*.

**paternity test.** A test, usu. involving DNA identification or tissue-typing, for determining whether a given man is the biological father of a particular child. See DNA IDENTIFICATION; HLA TEST.

**pater patriae** (pay-tər pay-tree-ee or pa-tree-ee). [Latin] Father of the country. See PARENS PATRIAE.

**pathological intoxication.** See INTOXICATION.

**pathology** (pə-thol-ə-jeë), *n.* The branch of medical study that examines the origins, symptoms, and nature of diseases. — **pathological** (path-ə-loj-i-kəl), *adj.* — **pathologist** (pə-thol-ə-jist), *n.*

**patiens** (pay-shee-enz), *n.* [Latin] A person who suffers or permits; the passive party in a transaction. Cf. AGENS (1).

**patient**, *n.* A person under medical or psychiatric care.

**patient-litigant exception.** An exemption from the doctor-patient privilege, whereby the privilege is lost when the patient sues the doctor for malpractice.



**patient-physician privilege.** See *doctor-patient privilege* under PRIVILEGE (3).

**patient's bill of rights.** A general statement of patient rights voluntarily adopted by a health-care provider or mandated by statute, covering such matters as access to care, patient dignity and confidentiality, personal safety, consent to treatment, and explanation of charges.

**pat. pend. abbr.** PATENT PENDING.

**patria** (*pay-tree-ə* or *pa-tree-ə*), *n.* [Latin] **1.** *Roman law.* The fatherland; a person's home area. **2. Hist.** The country or the area within it, such as a county or neighborhood. **3. Hist.** A jury, as when a defendant "puts himself upon the country" (*ponit se super patriam*). See CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY; PAYS.

"Though our Latin uses *patria*, our French uses *pays*, which descends from Latin *pagus*. The 'country' of this formula is not our father-land but 'the country-side.'" 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 624 n.1 (2d ed. 1899).

**patria potestas.** See POTESTAS.

**patricide** (*pa-trə-sid*), *n.* **1.** The act of killing one's own father. **2.** One who kills his or her father. — **patricidal**, *adj.* Cf. PARRICIDE.

**patrimonial** (*pa-trə-moh-nee-əl*), *adj.* Of or relating to an inheritance, esp. from a male ancestor.

**patrimonium** (*pa-trə-moh-nee-əm*), *n.* [Latin] *Roman law.* Property that is capable of being inherited; private property.

**patrimony** (*pa-trə-moh-nee*). **1.** An estate inherited from one's father or other ancestor; legacy or heritage. **2. Civil law.** All of a person's assets and liabilities that are capable of monetary valuation and subject to execution for a creditor's benefit.

**patron.** **1.** A regular customer or client of a business. **2.** A person who protects or supports some person or thing.

**patronage** (*pay-trə-nij*). **1.** The giving of support, sponsorship, or protection. **2.** All the customers of a business; clientele. **3.** The power to appoint persons to governmental positions or to confer other political favors. — Also termed (in sense 3) *political patronage*. See SPOILS SYSTEM.

**patruus** (*pa-troo-əs*), *n.* [Latin] *Roman & civil law.* A father's brother; a paternal uncle.

**patruus magnus** (*pa-troo-əs mag-nəs*), *n.* [Latin] *Roman & civil law.* A grandfather's brother; a great-uncle.

**patruus maximus** (*pa-troo-əs mak-sə-məs*). See ABPATRUUS.

**pattern**, *n.* A mode of behavior or series of acts that are recognizably consistent <a pattern of racial discrimination>.

**pattern jury charge.** See *model jury instruction* under JURY INSTRUCTION.

**pattern jury instruction.** See *model jury instruction* under JURY INSTRUCTION.

**pattern of racketeering activity.** Two or more related criminal acts that amount to, or pose a threat of, continued criminal activity. ● This phrase derives from the federal Racketeer Influenced and Corrupt Organizations Act. See RACKETEERING.

**pattern similarity.** See *comprehensive nonliteral similarity* under SUBSTANTIAL SIMILARITY.

**paucital** (*paw-si-təl*), *adj.* *Rare.* See IN PERSONAM.

**pauper.** A very poor person, esp. one who receives aid from charity or public funds; an indigent. See IN FORMA PAUPERIS.

**pauperies** (*paw-pər-eez*), *n.* [Latin "impoverishment"] *Roman law.* Damage done by a four-footed animal. ● The animal's owner was liable for the damage.

**pauper's affidavit.** See *poverty affidavit* under AFFIDAVIT.

**pauper's oath.** See OATH.

**pawn**, *n.* **1.** An item of personal property deposited as security for a debt; a pledge or guarantee. **2.** The act of depositing personal property in this manner. **3.** The condition of being held on deposit as a pledge. — **pawn**, *vb.* Cf. BAILMENT.

**pawnbroker**, *n.* One who lends money, usu. at a high interest rate, in exchange for personal property that is deposited as security by the borrower. — **pawnbroking**, *n.*

**pawnee.** One who receives a deposit of personal property as security for a debt.

**pawnor.** One who deposits an item of personal property as security for a debt. — Also spelled *pawner*.

**pax regis (paks ree-jis), n.** [Latin “the king’s peace”] *Hist.* **1.** The government’s guarantee of peace and security of life and property to all within the law’s protection. **2.** VERGE (1).

**payable, adj.** (Of a sum of money or a negotiable instrument) that is to be paid. ● An amount may be payable without being due. Debts are commonly payable long before they fall due.

**payable after sight.** Payable after acceptance or protest of nonacceptance. See *sight draft* under DRAFT.

**payable on demand.** Payable when presented or upon request for payment; payable at any time.

**payable to bearer.** Payable to anyone holding the instrument.

**payable to order.** Payable only to a specified payee.

**payable, n.** See *account payable* under ACCOUNT.

**payable date.** See DATE.

**pay any bank.** A draft indorsement that permits only banks to acquire the rights of a holder until the draft is either returned to the customer initiating collection or specially indorsed by a bank to a person who is not a bank. UCC § 4-201(b).

**payback method.** An accounting procedure that measures the time required to recover a venture’s initial cash investment.

**payback period.** The length of time required to recover a venture’s initial cash investment, without accounting for the time value of money.

**paydown.** A loan payment in an amount less than the total loan principal.

**payee.** One to whom money is paid or payable; esp., a party named in commercial paper as the recipient of the payment.

**payer.** See PAYOR.

**paying quantities. Oil & gas.** An amount earned from oil and gas production after paying the well’s drilling, equipping, and operating costs <production in paying quantities>.

**payment. 1.** Performance of an obligation, usu. by the delivery of money. ● Performance may occur by delivery and acceptance of things other than money, but there is a payment only if money or other valuable things are given and accepted in partial or full discharge of an obligation. **2.** The money or other valuable thing so delivered in satisfaction of an obligation.

**advance payment.** A payment made in anticipation of a contingent or fixed future liability or obligation.

**balloon payment.** A final loan payment that is usu. much larger than the preceding regular payments and that discharges the principal balance of the loan. See *balloon note* under NOTE (1).

**conditional payment.** Payment of an obligation only on condition that something be done. ● Generally, the payor reserves the right to demand the payment back if the condition is not met.

**constructive payment.** A payment made by the payor but not yet credited by the payee. ● For example, a rent check mailed on the first of the month is a constructive payment even though the landlord does not deposit the check until ten days later.

**direct payment. 1.** A payment made directly to the payee, without using an intermediary. **2.** A payment that is absolute and unconditional on the amount, the due date, and the payee.

**down payment.** The portion of a purchase price paid in cash (or its equivalent) at the time the sale agreement is executed. Cf. BINDER (2); EARNEST MONEY.

**involuntary payment.** A payment obtained by fraud or duress.

**lump-sum payment.** A payment of a large amount all at once, as opposed to smaller payments over time.

**payment bond.** See BOND (2).

**payment date.** See DATE.

**payment in due course.** A payment to the holder of a negotiable instrument at or after its maturity date, made by the payor in good faith and without notice of any defect in the holder’s title. See HOLDER IN DUE COURSE.

**payment intangible.** See INTANGIBLE.

**payment into court.** A party's money or property deposited with a court for distribution after a proceeding according to the parties' settlement or the court's order. See INTERPLEADER.

**payoff.** See KICKBACK.

**payola** (pay-oh-lə). An indirect and secret payment for a favor, esp. one relating to business; a bribe.

**payor.** One who pays; esp., a person responsible for paying a negotiable instrument. — Also spelled *payer*. See DRAWEE.

**payor bank.** See BANK.

**payout period.** The time required for an asset to produce enough revenue to pay back the initial investment; esp., in oil-and-gas law, the time required for a well to produce a sufficient amount of oil or gas to pay back the investment in the well.

**payout ratio.** The ratio between a corporation's dividends per share and its earnings per share. Cf. COMMON-STOCK RATIO.

**payroll.** -1. A list of employees to be paid and the amount due to each of them. 2. The total compensation payable to a company's employees for one pay period.

**payroll tax.** See TAX.

**pays** (pay or pays), *n.* [Law French] The country; a jury. See PATRIA.

**PBGC.** *abbr.* PENSION BENEFIT GUARANTY CORPORATION.

**P.C.** *abbr.* 1. See *professional corporation* under CORPORATION. 2. POLITICAL CORRECTNESS. 3. PRIVY COUNCILLOR.

**PCR action.** See POSTCONVICTION-RELIEF PROCEEDING.

**P.D.** *abbr.* PUBLIC DEFENDER.

**peace**, *n.* A state of public tranquility; freedom from civil disturbance or hostility <breach of the peace>. — **peaceable**, *adj.* — **peaceful**, *adj.*

## peculiar-risk doctrine

**armed peace.** A situation in which two or more nations, while at peace, are actually armed for possible or probable hostilities.

**peace, justice of.** See JUSTICE OF THE PEACE.

**peaceable possession.** See POSSESSION.

**peace bond.** See BOND (2).

**peace officer.** A civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order. • This term may also include a judge who hears criminal cases or another public official (such as a mayor) who may be statutorily designated as a peace officer for limited purposes. — Also termed *officer of the peace*; *conservator of the peace*.

**Peace of God and the church.** *Hist.* The cessation of litigation between terms and on Sundays and holidays.

**peacetime.** A period in which a country has declared neither a war nor a national emergency, even if the country is involved in a conflict or quasi-conflict.

**peace treaty.** See TREATY.

**peace warrant.** See WARRANT (1).

**peak demand.** The point (during some specified period) at which customer use results in the highest level of demand for a utility.

**peccavi** (pe-kay-vi or pe-kah-vee), *n.* [Latin "I have sinned"] An acknowledgment or confession of guilt.

**peculation** (pek-yə-lay-shən), *n.* Embezzlement, esp. by a public official. — **peculate** (pek-yə-layt), *vb.* — **peculative** (pek-yə-lə-tiv), *adj.* — **peculator** (pek-yə-lay-tər), *n.* Cf. DEPECULATION.

**peculatus** (pek-yə-lay-təs), *n.* [Latin] *Roman law.* The offense of stealing or embezzling public funds; peculation.

**peculiar-risk doctrine.** The principle that an employer will be liable for injury caused by an independent contractor if the employer failed to take precautions against a risk that is peculiar to the contractor's work and that the employer should have recognized. — Also termed *peculiar-risk exception*.

**peculium** (pi-kyoo-lee-əm), *n.* [Latin] *Roman law.* Property given by the head of a household to a son or slave, to be used at that person's discretion for business transactions.

**pecunia** (pi-kyoo-nee-ə), *n.* [Latin] *Hist.* **1.** Money. **2.** Real or personal property.

**pecunia constituta** (pi-kyoo-nee-ə kon-sti-t[y]oo-tə). [Latin "fixed sum of money"] *Roman law.* A debt reaffirmed by a promise to pay (i.e., a *constitutum*).

**pecunia non numerata** (pi-kyoo-nee-ə non n[y]oo-mə-ray-tə). [Latin] *Roman law.* Money not paid.

**pecunia numerata** (pi-kyoo-nee-ə n[y]oo-mə-ray-tə). [Latin] *Hist.* Money numbered or counted out; money given to pay a debt.

**pecuniary** (pi-kyoo-nee-er-ee), *adj.* Of or relating to money; monetary <a pecuniary interest in the lawsuit>.

**pecuniary benefit.** See BENEFIT.

**pecuniary bequest.** See BEQUEST.

**pecuniary cause.** *Eccles. law.* A lawsuit maintainable in an ecclesiastical court to redress an injury relating to the church, such as a parishioner's failure to pay a tithe to a parson.

**pecuniary damages.** See DAMAGES.

**pecuniary gain.** See GAIN (1).

**pecuniary legacy.** See LEGACY.

**pecuniary loss.** See LOSS.

**pecunia trajectitia** (pi-kyoo-nee-ə traj-ek-tish-ee-ə). [Latin "money conveyed overseas"] *Roman law.* Money loaned in connection with the transport of goods by ship. See NAUTICUM FENUS.

**pedage** (ped-ij). *Hist.* Money paid as a toll to travel through another's land. — Also termed *paage*; *pedagium*.

**pedagium** (pi-day-jee-əm). [Law Latin] See PEDAGE.

**pedal possession.** See POSSESSION.

**pedaneus** (pi-day-nee-əs), *n.* [Latin] *Roman law.* A judge who sat at the foot of the tribunal (i.e., in the lowest seat) ready to try minor cases at the command of the magistrate; an assistant judge.

**pederasty** (ped-ər-as-tee), *n.* Anal intercourse between a man and a boy. • Pederasty is illegal in all states. — **pederast** (ped-ə-rast), *n.* Cf. SODOMY.

**pedigree.** A history of family succession; ancestry or lineage.

**pedis abscissio** (pee-dis or ped-is ab-sish-ee-oh). [Latin "cutting off a foot"] *Hist.* Punishment by cutting off the offender's foot.

**pedis positio** (pee-dis or ped-is pə-zish-ee-oh). [Latin "the placement of the foot"] *Hist.* A putting or placing of the foot. • This term denoted possession of land by actual entry.

**pedis possessio.** See POSSESSIO.

**pedis possessio doctrine** (pee-dis or ped-is pə-zes[h]-ee-o). [Latin "possession-of-a-foot doctrine"] The principle that a prospector working on land in the public domain is entitled to freedom from fraudulent or forcible intrusions while actually working on the site.

**Peeping Tom.** A person who spies on another (as through a window), usu. to gain sexual pleasure; VOYEUR.

**peer, n. 1.** A person who is of equal status, rank, or character with another.

"The commonalty, like the nobility, are divided into several degrees; and, as the lords, though different in rank, yet all of them are peers in respect of their nobility, so the commoners, though some are greatly superior to others, yet all are in law peers, in respect of their want of nobility . . ." 1 William Blackstone, *Commentaries on the Laws of England* 391 (1765).

**2.** A member of the British nobility (such as a duchess, marquis, earl, viscount, or baroness). — **peerage** (peer-ij), *n.*

"The Crown has power to create any number of peers and of any degree. In modern practice the power is exercised on the advice of the Prime Minister and the honour is most commonly a reward for political services. Peerages can be, and have been, conferred for party political reasons; 12 were created in 1712 to save the government, and 16 to help pass the Reform Bill in 1832. In 1832 and 1911 the Opposition of the House of Lords was overcome by the threat to create enough peers to secure a majority . . . The main privilege of a peer is to

sit and vote in the House of Lords." David M. Walker, *The Oxford Companion to Law* 942 (1980).

**peer-reviewed journal.** A publication whose practice is to forward submitted articles to disinterested experts who screen them for scholarly or scientific reliability, the idea being that articles actually published have already withstood expert scrutiny and comment.

**peer-review organization.** A government agency that monitors health-regulation compliance by private hospitals requesting public funds (such as Medicare payments). — Abbr. PRO.

**peer-review privilege.** See PRIVILEGE (3).

**peers of fees.** *Hist.* Vassals or tenants of the same lord who judged disputes arising out of fees.

**peine forte et dure (pen for tay door or payn fort ay dyoor).** [French "strong and hard punishment"] *Hist.* The punishment of an alleged felon who refused to plead, consisting of pressing or crushing the person's body under heavy weights until the accused either pleaded or died.

"In all other felonies, however, the punishment of *peine forte et dure* was, until lately, denounced as the consequence of an obstinate silence. The greatest caution and deliberation were indeed to be exercised before it was resorted to; and the prisoner was not only to have '*trina admonitio*,' but a respite of a few hours, and the sentence was to be distinctly read to him, that he might be fully aware of the penalty he was incurring." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 425–26 (2d ed. 1826).

"In old English law, a person charged with felony who, refusing to accept jury trial, was pressed to death (*peine forte et dure*), was not regarded as committing suicide, so that he did not forfeit his property." Glanville Williams, *The Sanctity of Life and the Criminal Law* 270 n.4 (1957).

**pell.** See CLERK OF THE PELLs.

**pellex (pel-eks), n.** [Latin] *Roman law.* A concubine.

**penal (pee-nal), adj.** Of, relating to, or being a penalty or punishment, esp. for a crime.

"The general rule is that penal statutes are to be construed strictly. By the word 'penal' in this connection is meant not only such statutes as in terms impose a fine, or corporal punishment, or forfeiture as a consequence of violating laws, but also all acts which impose by way of punishment damages beyond compensation for the benefit of the injured party, or which impose any special

burden, or take away or impair any privilege or right." William M. Lile et al., *Brief Making and the Use of Law Books* 344 (3d ed. 1914).

"The word *penal* connotes some form of punishment imposed on an individual by the authority of the state. Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment the statute is always construed as penal." 3 Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 59.01, at 1 (4th ed. 1986).

**penal action.** See ACTION.

**penal bill.** See *penal bond* under BOND (2).

**penal bond.** See BOND (2).

**penal clause.** See PENALTY CLAUSE.

**penal code.** A compilation of criminal laws, usu. defining and categorizing the offenses and setting forth their respective punishments. — Also termed *criminal code*. See MODEL PENAL CODE.

**penal custody.** See CUSTODY (1).

**penal institution.** See PRISON.

**penal law. 1.** See *penal statute* under STATUTE.  
**2.** CRIMINAL LAW.

**penal liability.** See LIABILITY.

**penal redress.** See REDRESS.

**penal sanction.** See *criminal sanction* under SANCTION.

**penal statute.** See STATUTE.

**penal sum.** The monetary amount specified as a penalty in a penal bond. See *penal bond* under BOND (2).

**penalty. 1.** Punishment imposed on a wrongdoer, esp. in the form of imprisonment or fine.  
● Though usu. for crimes, penalties are also sometimes imposed for civil wrongs. **2.** Excessive liquidated damages that a contract purports to impose on a party that breaches. ● If the damages are excessive enough to be considered a penalty, a court will usu. not enforce that particular provision of the contract. Some contracts specify that a given sum of damages is intended "as liquidated damages and not as a penalty" — but even that language is not fool-proof.

"A *penalty* is a sum which a party . . . agrees to pay or forfeit in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a *punishment*, the threat of which is designed to prevent the breach, or as *security*, where the sum is deposited or the covenant to pay is joined in by one or more sureties, to insure that the person injured shall collect his actual damages. Penalties . . . are not recoverable or retainable as such by the person in whose favor they are framed . . ." Charles T. McCormick, *Handbook on the Law of Damages* § 146, at 600 (1935).

**civil penalty.** A fine assessed for a violation of a statute or regulation <the EPA levied a civil penalty of \$10,000 on the manufacturer for exceeding its pollution limits>.

**statutory penalty.** A penalty imposed for a statutory violation; esp., a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms without reference to any actual damages suffered.

**penalty clause.** A contractual provision that assesses an excessive monetary charge against a defaulting party. • Penalty clauses are generally unenforceable. — Often shortened to *penalty*. — Also termed *penal clause*. Cf. LIQUIDATED-DAMAGES CLAUSE; LIMITATION-OF-REMEDIES CLAUSE.

"It not infrequently happens that contracts provide for what is to happen in the event of a breach by the parties, or by one of them. Such provisions may be perfectly simple attempts to avoid future disputes, and to quantify the probable amount of any loss. That is unobjectionable. But sometimes clauses of this kind are not designed to quantify the amount of the probable loss, but are designed to terrorize, or frighten, the party into performance. For example, a contract may provide that the promisor is to pay £5 on a certain event, but if he fails to do so, he must then pay £500. Now a clause of that kind is called a penalty clause by lawyers, and for several hundred years it has been the law that such promises cannot be enforced. The standard justification for the law here is that it is unfair and unconscionable to enforce clauses which are designed to act *in terrorem*." P.S. Atiyah, *Promises, Morals, and Law* 57-58 (1981).

**penance.** *Eccles. law.* A punishment assessed by an ecclesiastical court for some spiritual offense.

**pend, vb.** (Of a lawsuit) to be awaiting decision or settlement.

**pendency** (pen-dən-see), *n.* The state or condition of being pending or continuing undecided.

**pendens.** See LIS PENDENS.

**pendent** (pen-dənt), *adj.* **1.** Not yet decided; pending <a pendent action>. **2.** Of or relating to pendent jurisdiction or pendent-party juris-

diction <pendent parties>. **3.** Contingent; dependent <pendent upon a different claim>.

**pendent-claim jurisdiction.** See *pendent jurisdiction* under JURISDICTION.

**pendente lite** (pen-dən-tee li-tee), *adv.* [Latin "while the action is pending"] During the proceeding or litigation; contingent on the outcome of litigation. — Also termed *lite pendente*. Cf. LIS PENDENS.

**pendente lite administration.** See ADMINISTRATION.

**pendent jurisdiction.** See JURISDICTION.

**pendent-party jurisdiction.** See JURISDICTION.

**pending, adj.** Remaining undecided; awaiting decision <a pending case>.

**pending, prep.** **1.** Throughout the continuance of; during <in escrow pending arbitration>. **2.** While awaiting; until <the injunction was in force pending trial>.

**pending-ordinance doctrine.** The principle that a municipality may properly deny an application for a property use that, although it would satisfy existing law, would violate a law that is pending when the application is made. • This doctrine was judicially created, mainly to short-circuit landowners' attempts to circumvent a new ordinance by applying for a nonconforming use on the eve of its approval.

**penetration pricing.** Pricing of a new product below its anticipated market price to enter a market, discourage competition, and recover the initial investment.

**penitentiary** (pen-ə-ten-shə-ree), *n.* A correctional facility or other place of long-term confinement for convicted criminals; PRISON. — **penitentiary, adj.**

**Pennoyer rule** (pə-noy-ər). The principle that a court may not issue a personal judgment against a defendant over which it has no personal jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

**Pennsylvania rule.** *Torts.* The principle that a tortfeasor who violates a statute in the process of causing an injury has the burden of showing that the violation did not cause the injury.

**pennystock.** See STOCK.

**penology** (pee-nol-ə-jee), *n.* The study of penal institutions, crime prevention, and the punishment and rehabilitation of criminals, including the art of fitting the right treatment to an offender. — **penological** (pee-nə-loj-i-kəl), *adj.* — **penologist** (pee-nol-ə-jist), *n.* Cf. CRIMINOLOGY.

**pen register.** A mechanical device that logs dialed telephone numbers, without overhearing the telephone conversation, by monitoring electrical impulses. Cf. WIRETAPPING.

**pensio** (pen-shee-oh), *n.* [Latin] *Roman & civil law.* A payment for the use of a thing, such as rent for the use of another's house.

**pension.** A fixed sum paid regularly to a person (or to the person's beneficiaries), esp. by an employer as a retirement benefit. Cf. ANNUITY.

**vested pension.** A pension in which an employee (or employee's estate) has rights to benefits purchased with the employer's contributions to the plan, even if the employee is no longer employed by this employer at the time of retirement. • The vesting of qualified pension plans is governed by ERISA. See EMPLOYEE RETIREMENT INCOME SECURITY ACT.

**Pension Benefit Guaranty Corporation.** The federal agency that guarantees the payment of retirement benefits covered by private pension plans that lack sufficient assets to pay the promised benefits. — Abbr. PBGC.

**pensioner.** A recipient or beneficiary of a pension plan.

**pension plan.** An employer's plan established to pay long-term retirement benefits to employees or their beneficiaries; a plan providing systematically for the payment of definitely determinable benefits to employees over a period of years, usu. for life, after retirement. • Retirement benefits are typically determined by such factors as years of the employee's service and compensation received. ERISA governs the administration of many pension plans. See EMPLOYEE RETIREMENT INCOME SECURITY ACT. Cf. EMPLOYEE BENEFIT PLAN.

**contributory pension plan.** A pension plan in which both the employer and the employee contribute.

**defined-contribution plan.** See EMPLOYEE BENEFIT PLAN.

**defined pension plan.** A pension plan in which the employer promises specific benefits to each employee. — Also termed *fixed-benefit plan.*

**noncontributory pension plan.** A pension plan contributed to only by the employer.

**nonqualified pension plan.** A deferred-compensation plan in which an executive increases retirement benefits by annual additional contributions to the company's basic plan.

**qualified pension plan.** A pension plan that complies with federal law (ERISA) and thus allows the employee to receive tax benefits for contributions and tax-deferred investment growth.

**top-hat plan.** An unfunded pension plan that is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of managers or highly paid employees. • Top-hat plans are generally not subject to the broad remedial provisions of ERISA because Congress recognized that certain individuals, by virtue of their position or compensation level, can substantially influence the design or operation of their deferred-compensation plan.

**pension trust.** See TRUST.

**penumbra** (pi-nəm-brə), *n.* A surrounding area or periphery of uncertain extent. • In constitutional law, the Supreme Court has ruled that the specific guarantees in the Bill of Rights have penumbras containing implied rights, esp. the right of privacy. Pl. **penumbras**, **penumbrae** (pi-nəm-bree). — **penumbral** (pi-nəm-brəl), *adj.*

"Problems of fringe meaning are sometimes spoken of as 'problems of the penumbra', the point being that, in the case of a great many words, there is no doubt about the hard core of their meanings, but different views may well be taken on the question whether the words are applicable to things or situations outside that hard core." Rupert Cross, *Statutory Interpretation* 57 (1976).

**peonage** (pee-ə-nij), *n.* Illegal and involuntary servitude in satisfaction of a debt. — **peon**, *n.*

"Peonage, which is a term descriptive of a condition that existed in Spanish America, and especially in Mexico, and in the territory of New Mexico, and which may be defined as the status or condition of compulsory service based upon the indebtedness of the peon to the master, the basic fact being the indebtedness, is abolished and prohibited by an act of Congress which further declares that any statute, resolution, regulation, ordinance, or usage of any territory or state designed or operating to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons

as peons, in liquidation of any debt or obligation, or otherwise, shall be null and void [42 USCA § 1994].” 45 Am. Jur. 2d *Involuntary Servitude and Peonage* § 10, at 935-36 (1969).

**people.** (*usu. cap.*) The citizens of a state as represented by the prosecution in a criminal case <*People v. Snyder*>.

**people's court.** **1.** A court in which ordinary people can resolve small disputes. See *small-claims court* under COURT. **2.** In totalitarian countries, a group of nonlawyer citizens, often illiterate commoners, convened at the scene of a crime to pass judgment or impose punishment on the accused criminal. **3.** (*cap.*) In Nazi Germany, a tribunal that dealt with political offenses.

**peppercorn.** A small or insignificant thing or amount; nominal consideration <the contract was upheld despite involving mere peppercorn>. See *nominal consideration* under CONSIDERATION.

**per** (*pər*), *prep.* **1.** Through; by <the dissent, per Justice Thomas>. **2.** For each; for every <55 miles per hour>. **3.** In accordance with the terms of; according to <per the contract>.

**perambulation.** The act or custom of walking around the boundaries of a piece of land, either to confirm the boundaries or to preserve evidence of them.

**perambulatione facienda.** See DE PERAMBULATIONE FACIENDA.

**per annum** (*pər an-əm*), *adv.* [Latin] By, for, or in each year; annually <interest of eight percent per annum>.

**P/E ratio.** *abbr.* PRICE-EARNINGS RATIO.

**per autre vie.** See PUR AUTRE VIE.

**per aversionem** (*pər ə-vər-zhee-oh-nəm*). [Latin “for a lump sum”] *Roman & civil law.* Of a sale in which goods are taken in bulk or land is bought by estimation of the number of acres. ● This type of sale is so called because the buyer “turns away” from a careful scrutiny of the things purchased.

**per bouche** (*pər boosh*). [Law French] By the mouth; orally.

**per capita** (*pər kap-i-tə*), *adj.* [Latin “by the head”] **1.** Divided equally among all individuals, usu. in the same class <the court will distribute the property to the descendants on a per capita basis>. Cf. PER STIRPES.

“*Per capita* means taking as an individual and not as a representative of an ancestor. Suppose the testator . . . with three living children and three grandchildren who are the issue of a deceased son, had desired and had so stated in his will that his own children and the children of his deceased son should share equally in the estate. In that event the estate would be divided into six parts and each of the three children and each of the three grandchildren would receive an equal portion of the total estate — namely, one-sixth.” Gilbert Thomas Stephenson, *Wills* 30 (1934).

**per capita with representation.** Divided equally among all members of a class of takers, including those who have predeceased the testator, so that no family stocks are cut off by the prior death of a taker. ● For example, if T (the testator) has three children — A, B, and C — and C has two children but predeceases T, C’s children would still take C’s share when T’s estate is distributed.

**2.** Allocated to each person; possessed by each individual <the average annual per capita income has increased over the last two years>. — **per capita**, *adv.*

**per capita tax.** See *poll tax* under TAX.

**percentage lease.** See LEASE.

**percentage-of-completion method.** See ACCOUNTING METHOD.

**percentage order.** See ORDER (4).

**perception.** *Civil law.* The act of taking into possession (as rents, profits, etc.).

**percolating water.** See WATER.

**per consequens** (*pər kon-sə-kwenz*). [Latin] By consequence; consequently.

**per considerationem curiae** (*pər kən-sid-ə-ray-shee-oh-nəm kyoor-ee-ee*). [Law Latin] By the consideration of the court.

**per contra** (*pər kon-trə*). [Latin] On the other hand; to the contrary; by contrast.

**per curiam** (*pər kyoor-ee-əm*), *adv. & adj.* [Latin] By the court as a whole.



**per curiam**, *n.* See *per curiam opinion* under OPINION (1).

**per curiam opinion**. See OPINION (1).

**per diem** (pər dī-əm or dee-əm), *adv.* [Latin] By the day; for each day. Cf. IN DIEM.

**per diem**, *adj.* Based on or calculated by the day <per diem interest>.

**per diem**, *n.* **1.** A monetary daily allowance, usu. to cover expenses. **2.** A daily fee.

**perdonatio utlagariae** (pər-də-nay-shee-oh ət-lə-gair-ee-ee). [Law Latin “pardon of outlawry”] *Hist.* A pardon given to a person outlawed for failing to obey a court’s summons. • A person who voluntarily surrendered was eligible for this type of pardon.

**perduellio** (pər-d[y]oo-el-ee-oh). [Latin “treason”] *Roman law.* Treasonous conduct, such as joining the enemy or deserting the battlefield. • *Perduellio* was later absorbed into a broader category of crimes against the state, the *crimen laesae majestatis*. — Also termed *perduellion* (pər-d[y]oo-el-yən). See CRIMEN LAESAE MAJESTATIS.

**perdurable** (pər-d[y]uur-ə-bəl), *adj.* (Of an estate in land) lasting or enduring; durable; permanent.

**perempt** (pər-empt), *vb.* **1.** *Civil law.* To quash, do away with, or extinguish. **2.** *Slang.* To exercise a peremptory challenge.

**peremption**. *Civil law.* The period during which a legal right exists. • If the right is not exercised during this period, it is destroyed. Whereas prescription simply bars a specific remedy, peremption bars the action itself. Cf. PRESCRIPTION (1). See STATUTE OF REPOSE.

**peremptory** (pər-emp-tə-ree), *adj.* **1.** Final; absolute; conclusive; incontrovertible <the king’s peremptory order>. **2.** Not requiring any shown cause; arbitrary <peremptory challenges>.

**peremptory**, *n.* See *peremptory challenge* under CHALLENGE (2).

**peremptory challenge**. See CHALLENGE (2).

**peremptory day**. See DAY.

**peremptory defense**. See DEFENSE (1).

**peremptory exception**. See EXCEPTION (1).

**peremptory instruction**. See JURY INSTRUCTION.

**peremptory mandamus**. See MANDAMUS.

**peremptory plea**. See PLEA (3).

**peremptory strike**. See *peremptory challenge* under CHALLENGE (2).

**peremptory writ**. See WRIT.

**per eundem** (pər ee-ən-dəm). [Latin] By the same. • This term often appears in the phrase *per eundem in eadem* (“by the same judge in the same case”).

**perfect** (pər-fekt), *vb.* To take all legal steps needed to complete, secure, or record (a claim, right, or interest); to put in final conformity with the law <perfect a security interest> <perfect the title>.

**perfect attestation clause**. A provision in a testamentary instrument asserting that all actions required to make a valid testamentary disposition have been performed.

**perfect competition**. See COMPETITION.

**perfect duty**. See DUTY (1).

**perfected security interest**. See SECURITY INTEREST.

**perfect equity**. See EQUITY.

**perfecting amendment**. See AMENDMENT (1).

**perfect instrument**. See INSTRUMENT.

**perfection**. Validation of a security interest as against other creditors, usu. by filing a statement with some public office or by taking possession of the collateral. Cf. ATTACHMENT (4).

**automatic perfection**. The self-operative perfection of a purchase-money security interest without filing or without possession of the collateral. • The security interest is perfected simply by the attachment of the security interest, without any additional steps. See *purchase-money security interest* under SECURITY INTEREST.

**temporary perfection.** The continuous perfection of a security interest for a limited period. • For example, a security interest in proceeds from the original collateral is perfected for ten days after the debtor receives the proceeds; the interest will become unperfected after this ten-day period unless certain statutory requirements are met. On most instruments, a secured party who advances new value under a written security agreement obtains a 21-day perfection period, even if the secured party does not file a financing statement and the collateral remains with the debtor. UCC § 9-304(4).

**perfect right.** See RIGHT.

**perfect self-defense.** See SELF-DEFENSE.

**perfect tender.** See TENDER (2).

**perfect-tender rule.** *Commercial law.* The principle that a buyer may reject a seller's goods if the quality, quantity, or delivery of the goods fails to conform precisely to the contract. • Although the perfect-tender rule was adopted by the UCC (§ 2-601), other Code provisions — such as the seller's right to cure after rejection — have softened the rule's impact. Cf. SUBSTANTIAL-PERFORMANCE DOCTRINE.

“At common law, a buyer of goods possessed a legal right to insist upon ‘perfect tender’ by the seller. If the goods failed to conform exactly to the description in the contract — whether as to quality, quantity or manner of delivery — the buyer could reject the goods and rescind the contract, which meant that the parties would be returned to the positions they occupied before the contract was entered into.” Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 112 (1990).

**perfect title.** See TITLE (2).

**perfect usufruct.** See USUFRUCT.

**perfect war.** See WAR.

**per feloniam** (pər fə-loh-nee-əm). [Latin] *Hist.* With criminal intent.

**perfidy** (pər-fə-dee). *Int'l law.* A combatant's conduct that creates the impression that an adversary is entitled to, or is obliged to accord, protection under international law, when in fact the conduct is a ruse to gain an advantage. • Acts of perfidy include feigning an intent to negotiate under a flag of truce, or feigning protected status by using signs, emblems, or uniforms of the United Nations or of a neutral country.

**per formam doni** (pər fɔr-məm doh-ni). [Law Latin] By the form of the gift; by the designation of the giver rather than by operation of law.

**performance, n. 1.** The successful completion of a contractual duty, usu. resulting in the performer's release from any past or future liability; EXECUTION (2). — Also termed *full performance*. — **perform, vb.** Cf. NONPERFORMANCE.

**defective performance.** A performance that, whether partial or complete, does not completely comply with the contract. • One example is late performance.

**future performance.** Performance in the future of an obligation that will become due under a contract.

**misperformance.** See MISPERFORMANCE.

**nonperformance.** See NONPERFORMANCE.

**part performance.** See PART PERFORMANCE.

**specific performance.** See SPECIFIC PERFORMANCE.

**substantial performance.** Performance of the primary, necessary terms of an agreement. See SUBSTANTIAL-PERFORMANCE DOCTRINE.

**2.** The equitable doctrine by which acts consistent with an intention to fulfill an obligation are construed to be in fulfillment of that obligation, even if the party was silent on the point. **3.** A company's earnings. **4.** The ability of a corporation to maintain or increase earnings.

**performance bond. 1.** A bond given by a surety to ensure the timely performance of a contract. • In major international agreements, performance bonds are typically issued by banks, but sometimes also by insurance companies. The face amount of the bond is typically 2% of the value of performance, but occasionally as much as 5%. **2.** A third party's agreement to guarantee the completion of a construction contract upon the default of the general contractor. — Also termed *completion bond*; *surety bond*; *contract bond*. Cf. *common-law bond* under BOND (2).

**nonoperative performance bond.** A performance bond that is not currently in effect but is activated upon the issuance of the buyer's letter of credit or other approved financing.

**operative performance bond.** A performance bond that has been activated by the issuance of the buyer's letter of credit or other approved financing.

**revolving performance bond.** A performance bond that is in effect on a continuing basis for the duration of the contract, usu. plus an additional number of days (often 45).

**up-front performance bond.** A performance bond given before the issuance of the buyer's letter of credit or other financing.

**performance fund.** See MUTUAL FUND.

**performance plan.** A bonus compensation plan in which executives are paid according to the company's growth.

**performance right.** A copyright holder's exclusive right to recite, play, act, show, or otherwise render the protected work publicly, whether directly or by technological means (as by broadcasting the work on television).

**performance shares.** Stock given to an executive when the corporation meets a performance objective.

**performance stock.** See *glamour stock* under STOCK.

**per fraudem** (pər fraw-dəm), *adv.* [Latin] By fraud; fraudulently.

**periculosus** (pər-ik-yə-loh-səs), *adj.* [Latin] Dangerous; perilous.

**periculum** (pə-rik-yə-ləm), *n.* [Latin] *Civil law.* Peril; danger; risk.

**peril.** 1. Exposure to the risk of injury, damage, or loss <the perils of litigation>. 2. *Insurance.* The cause of a loss to person or property <insured against all perils>. Cf. RISK (3).

**peril of the sea.** An action of the elements at sea of such force as to overcome the strength of a well-founded ship and the normal precautions of good marine practice. • A peril of the sea may relieve a carrier from liability for the resulting losses. — Also termed *danger of navigation*; *danger of river*; *marine peril*; *marine risk*; (in regard to the Great Lakes) *perils of the lakes*.

"Of the marine perils, by far the most important are those 'of the seas'. What is covered is not any loss that may happen *on* the sea, but fortuitous losses occurring through extraordinary action of the elements at sea, or any accident or mishap in navigation. By far the greatest number of claims for marine loss, and of the insurance problems connected with other topics treated in this book arise under this clause. Extraordinary action of the

wind and waves is a sea peril. Collision, foundering, stranding, striking on rocks and icebergs, are all covered under these words. Even a swell from a passing ship may be a 'peril of the sea'. On the other hand, ordinary wear and tear are not included under the coverage of this or any other phrase in the clause, nor are losses which are anticipatable as regular incidents of sea carriage in general or of navigation in a particular part of the world." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 2-9, at 72-73 (2d ed. 1975).

**per incuriam** (pər in-kyoor-ee-əm), *adj.* (Of a judicial decision) wrongly decided, usu. because the judge or judges were ill-informed about the applicable law.

"As a general rule the only cases in which decisions should be held to have been given *per incuriam* are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided *per incuriam*, must in our judgment, consistently with the *stare decisis* rule which is an essential part of our law, be of the rarest occurrence." Rupert Cross & J.W. Harris, *Precedent in English Law* 149 (4th ed. 1991).

**per infortunium** (pər in-for-t[y]oo-nee-əm), *adj. or adv.* [Latin] By misadventure. • At common law, when one person killed another *per infortunium*, a conviction and royal pardon were necessary even when there was no fault. See *homicide per infortunium* under HOMICIDE.

"It may seem strange to modern minds that for centuries it was a rule of our law that a man who killed another either by misadventure (*per infortunium*) or in reasonable self-defence (against an attack not itself felonious), although he did not commit a felony, must yet be held guilty of unlawful homicide and require the King's pardon if he were to escape punishment, and even if granted pardon would still be liable to suffer forfeiture of his property; and that he was exposed to claims for compensation from the family of the deceased." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 113 (16th ed. 1952).

**periodic alimony.** See *permanent alimony* under ALIMONY.

**periodic estate.** See ESTATE.

**periodic-payment-plan certificate.** See CERTIFICATE.

**periodic tenancy.** See TENANCY.

**peripheral right.** See RIGHT.

**periphrasis** (pə-rif-rə-sis), *n.* A roundabout way of writing or speaking; circumlocution. — **periphrastic** (per-ə-fras-tik), *adj.*

**perjury** (pər-jər-ee), *n.* The act or an instance of a person's deliberately making material false or misleading statements while under oath. — Also termed *false swearing*; *false oath*; (archaically) *forswearing*. — **perjure** (pər-jər), *vb.* — **perjured** (pər-jərd), **perjurious** (pər-juur-ee-əs), *adj.* — **perjuror** (pər-jər-ər), *n.*

**perjury-trap doctrine.** The principle that a perjury indictment against a person must be dismissed if the prosecution secures it by calling that person as a grand-jury witness in an effort to obtain evidence for a perjury charge, esp. when the person's testimony does not relate to issues material to the ongoing grand-jury investigation.

**perk**, *n.* See PERQUISITE.

**per legem terrae** (pər lee-jəm ter-ee). [Law Latin] By the law of the land; by due process of law.

**permanent abode.** See DOMICILE (1).

**permanent alimony.** See ALIMONY.

**permanent allegiance.** See ALLEGIANCE.

**permanent chargé d'affaires.** See CHARGÉ D'AFFAIRES.

**permanent committee.** See *standing committee* under COMMITTEE.

**permanent disability.** See DISABILITY (1).

**permanent employment.** See EMPLOYMENT.

**permanent financing.** See FINANCING.

**permanent fixture.** See FIXTURE.

**permanent injunction.** See INJUNCTION.

**permanent injury.** See INJURY.

**permanent law.** See LAW.

**permanent nuisance.** See NUISANCE.

**permanent trespass.** See TRESPASS.

**permanent ward.** See WARD.

**per metas et bundas** (pər mee-təs et bən-dəs). [Law Latin] By metes and bounds.

**per minas.** See *duress per minas* under DURESS.

**permissible appointee.** See APPOINTEE.

**permission.** **1.** The act of permitting. **2.** A license or liberty to do something; authorization.

**permissive abstention.** See ABSTENTION.

**permissive counterclaim.** See COUNTERCLAIM.

**permissive inference.** See *permissive presumption* under PRESUMPTION.

**permissive joinder.** See JOINDER.

**permissive presumption.** See PRESUMPTION.

**permissive subject of bargaining.** *Labor law.* An employment or collective-bargaining issue, other than a basic employment issue, that is not required to be the subject of collective bargaining but that cannot be implemented by management without union approval. • For example, altering the scope of the bargaining unit does not affect a term or condition of employment, so it is a permissive, instead of mandatory, subject of bargaining. Disagreement on a permissive subject of bargaining cannot be used as the basis for an impasse in negotiating a collective-bargaining agreement, unlike a mandatory subject of bargaining. — Often shortened to *permissive subject*. Cf. MANDATORY SUBJECT.

**permissive use.** See USE (4).

**permissive waste.** See WASTE (1).

**permit** (pər-mit), *n.* A certificate evidencing permission; a license <a gun permit>.

**permit** (pər-mit), *vb.* **1.** To consent to formally <permit the inspection to be carried out>. **2.** To give opportunity for <lax security permitted the escape>. **3.** To allow or admit of <if the law so permits>.

**permit bond.** See *license bond* under BOND (2).

**permit card.** *Labor law.* A document issued by a union to a nonunion member to allow the

person to work on a job covered by a union contract.

**per mitter le droit** (pər mit-ər lə droyt). [Law French] *Hist.* By passing the right. • This described how releases became effective, as when a person disseised of land released the estate to the disseisor, at which time the right and possession combined to give the disseisor the entire estate.

**per mitter l'estate** (pər mit-ər lə-stayt). [Law French] *Hist.* By passing the estate. • This described the manner in which a joint tenant's right to an entire estate arose when the tenant received the remaining estate from the other joint tenant.

**permutatio** (pər-myoo-tay-shee-oh), *n.* [Latin] *Roman law.* An agreement for barter or exchange.

**per my et per tout** (pər mee ay pər too[t]). [Law French] By the half and by the whole. • This phrase described the estate held by joint tenants: *by the half* for purposes of survivorship, *by the whole* for purposes of alienation. Cf. PER TOUT ET NON PER MY.

**pernancy** (pər-nən-see). *Hist.* A taking or reception, as of the profits of an estate.

**pernor of profits** (pər-nər or -nor). *Hist.* A person who receives the profits of property; one who has the pernancy of the profits.

**perp** (pərp), *n.* *Slang.* Perpetrator <the police brought in the perp for questioning>. See PERPETRATOR.

**perpars** (pər-pahrz). [Law Latin, fr. Latin *per partes* "by parts"] See PURPART.

**perpetrate**, *vb.* To commit or carry out (an act, esp. a crime) <find whoever perpetrated this heinous deed>. — **perpetration**, *n.*

**perpetrator**. A person who commits a crime or offense.

**perpetua** (pər-pech-oo-ə). See *exceptio peremptoria* under EXCEPTIO.

**perpetual bond**. See *annuity bond* under BOND (3).

**perpetual edict**. See EDICT.

**perpetual freehold**. See FREEHOLD.

**perpetual injunction**. See *permanent injunction* under INJUNCTION.

**perpetual lease**. See LEASE.

**perpetual statute**. See STATUTE.

**perpetual succession**. See SUCCESSION (4).

**perpetual trust**. See TRUST.

**perpetuating testimony**. The means or procedure for preserving for future use witness testimony that might otherwise be unavailable at trial.

**perpetuities, rule against**. See RULE AGAINST PERPETUITIES.

**perpetuity** (pər-pə-t[y]oo-ə-tee). **1.** The state of continuing forever. **2. Hist.** An unbarrable entail. **3. Hist.** An inalienable interest. **4.** An interest that does not take effect or vest within the period prescribed by law. • In reference to the rule against perpetuities, only sense 4 is now current. See RULE AGAINST PERPETUITIES.

"A perpetuity is a thing odious in law, and destructive of the Commonwealth; it would put a stop to commerce and prevent the circulation of the riches of the Kingdom, and therefore is not to be countenanced in equity. If in equity you could come nearer to a perpetuity than the rules of Common Law would admit, all men being desirous to continue their estates in their families, would settle their estates by way of trust; which might indeed make well for the jurisdiction of the court, but would be destructive of the commonwealth." (1683) 1 Vern. 163 (per Lord North) (as quoted in George W. Keeton, *English Law: The Judicial Contribution* 118 (1974)).

**perpetuity of the king or queen**. A fiction of English law that for political purposes the king or queen is immortal; that is, a monarch dies, but the office is never vacant.

**per procuracionem** (pər prok-yə-ray-shee-oh-nəm). [Latin] By proxy. — Abbr. *per pro.*; *p. proc.*; *p. pro.*; *p.p.* — Also termed *per procuracionem*.

**per quae servitia** (pər kwee sər-vish-ee-ə). [Latin "by which services"] *Hist.* A real action by which the grantee of a landed estate could compel the tenants of the grantor to attorn to him. • This action was abolished in the 19th century.

**perquisite** (pər-kwi-zit). A privilege or benefit given in addition to one's salary or regular wages. — Often shortened to *perk*.

**perquisitor** (pər-kwiz-ə-tər). [Latin "a seeker out"] *Hist.* A purchaser; esp., one who first acquires an estate by sale or gift.

**per quod** (pər kwod), *adv. & adj.* [Latin "whereby"] Requiring reference to additional facts; (of libel or slander) actionable only on allegation and proof of special damages. See *libel per quod* under LIBEL; *slander per quod* under SLANDER.

**per quod consortium amisit** (pər kwod kən-sor-shee-əm ə-mi-zit). [Law Latin] *Hist.* Whereby he lost the company (of his wife). • This phrase was used in a trespass declaration to describe the loss suffered by a husband whose wife had been beaten or otherwise abused.

**per quod servitium amisit** (pər kwod sər-vish-ee-əm ə-mi-zit). [Law Latin] *Hist.* Whereby he lost the services (of his servant). • This phrase was used in a trespass declaration to describe the loss suffered by a master whose servant had been injured by another.

**per se** (pər say), *adv. & adj.* [Latin] **1.** Of, in, or by itself; standing alone, without reference to additional facts. See *libel per se* under LIBEL. **2.** As a matter of law.

**persecutio** (pər-sə-kyoo-shee-oh), *n.* [Latin] *Roman law.* A lawsuit or civil claim.

**per se deadly weapon.** See *deadly weapon per se* under WEAPON.

**persequi** (pər-sə-kwi), *vb.* [Latin] *Roman law.* To claim through a judicial proceeding.

**per se rule.** *Antitrust.* The judicial principle that a trade practice violates the Sherman Act simply if the practice is a restraint of trade, regardless of whether it actually harms anyone. See SHERMAN ANTITRUST ACT. Cf. RULE OF REASON.

**per se violation.** *Antitrust.* A trade practice (such as price-fixing) that is considered inherently anticompetitive and injurious to the public without any need to determine whether it has actually injured market competition.

**persistent price discrimination.** See PRICE DISCRIMINATION.

**person.** **1.** A human being. **2.** An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. **3.** The living body of a human being <contract found on the smuggler's person>.

"So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition." John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10th ed. 1947).

**artificial person.** An entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being. — Also termed *fictional person*; *juristic person*; *legal person*; *moral person*.

**disabled person.** A person who has a disability. See DISABILITY.

**fictional person.** See *artificial person*.

**interested person.** A person having a property right in or claim against a thing, such as a trust or decedent's estate.

**juristic person.** See *artificial person*.

**legal person.** See *artificial person*.

**moral person.** See *artificial person*.

**natural person.** A human being, as distinguished from an artificial person created by law.

**person in loco parentis** (in loh-koh pə-ren-tis). A person acting in the place of a parent; a person who has assumed the obligations of a parent without formally adopting the child.

**person of incidence.** The person against whom a right is enforceable; a person who owes a legal duty.

**person of inherence** (in-heer-ənts). The person in whom a legal right is vested; the owner of a right.

**private person.** **1.** A person who does not hold public office or serve in the military. **2.** *Civil law.* An entity such as a corporation or partnership that is governed by private law.

**protected person.** **1.** A person for whom a conservator has been appointed or other protective order has been made. **2.** *Int'l law.* A

person who is protected by a rule of international law; esp., one who is in the hands of an occupying force during a conflict. • Protected persons are entitled to a standard of treatment (including a prohibition on coercion and corporal punishment) by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949). **3.** *English law.* An inhabitant of a protectorate of the United Kingdom. • Though not a British subject, such a person is given diplomatic protection by the Crown.

**persona** (pər-soh-nə), *n.* [Latin] *Roman law.* A person; an individual human being.

**personable**, *adj.* Having the status of a legal person (and thus the right to plead in court, enter into contracts, etc.) <a personable entity>.

**persona designata** (pər-soh-nə dez-ig-nay-tə). [Latin] A person considered as an individual (esp. in a legal action) rather than as a member of a class.

**persona ficta** (pər-soh-nə fik-tə). [Latin “false mask”] *Hist.* A fictional person, such as a corporation.

“But units other than individual men can be thought of as capable of acts, or of rights and liabilities: such are Corporations and even *Hereditates Iacentes*. Accordingly the way is clear to apply the name of person to these also. The mediaeval lawyers did so, but as they regarded Corporations as endowed with personality by a sort of creative act of the State, and received from the Roman lawyers the conception of the *hereditas iacens* as representing the *persona* of the deceased rather than as itself being a person, they called these things *Personae Fictae*, an expression not used by the Romans.” W.W. Buckland, *Elementary Principles of the Roman Private Law* 16 (1912).

**person aggrieved.** See *aggrieved party* under PARTY (2).

**persona grata** (pər-soh-nə gray-tə or grah-tə or grat-ə), *n.* [Latin] An acceptable person; esp., a diplomat who is acceptable to a host country. Pl. **personae gratae** (pər-soh-nee gray-tee or grah-tee or grat-ee). Cf. PERSONA NON GRATA.

**personal**, *adj.* **1.** Of or affecting a person <personal injury>. **2.** Of or constituting personal property <personal belongings>. See IN PERSONAM.

**personal action.** See ACTION.

**personal asset.** See ASSET.

**personal bond.** See BOND (2).

**personal chattel.** See CHATTEL.

**personal check.** See CHECK.

**personal defense.** See DEFENSE (4).

**personal demand.** See DEMAND (2).

**personal effects.** Items of a personal character; esp., personal property owned by a decedent at the time of death.

**personal estate.** See *personal property* under PROPERTY.

**personal evidence.** See TESTIMONY.

**personal exemption.** See EXEMPTION.

**personal holding company.** See COMPANY.

**personal-holding-company tax.** See *holding-company tax* under TAX.

**personal income.** See INCOME.

**personal injury.** See INJURY.

**personalis actio** (pər-sə-nay-lis ak-shee-oh). [Latin] *Hist.* A personal action; an action *in personam*.

**personaliter** (pər-sə-nay-lə-tər), *adv.* [Latin] Personally; in person.

**personality.** The legal status of one regarded by the law as a person; the legal conception by which the law regards a human being or an artificial entity as a person. — Also termed *legal personality*.

“Legal personality . . . refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities.” George Whitecross Paton, *A Textbook of Jurisprudence* 393 (G.W. Paton & David P. Derham eds., 4th ed. 1972).

**personal judgment.** See JUDGMENT.

**personal jurisdiction.** See JURISDICTION.

**personal justice.** See JUSTICE (1).

**personal knowledge.** See KNOWLEDGE.

**personal law.** The law that governs a person's family matters, usu. regardless of where the person goes. • In common-law systems, personal law refers to the law of the person's domicile. In civil-law systems, it refers to the law of the individual's nationality (and so is sometimes called *lex patriae*). Cf. TERRITORIAL LAW.

"The idea of the personal law is based on the conception of man as a social being, so that those transactions of his daily life which affect him most closely in a personal sense, such as marriage, divorce, legitimacy, many kinds of capacity, and succession, may be governed universally by that system of law deemed most suitable and adequate for the purpose . . . . [A]lthough the law of the domicile is the chief criterion adopted by English courts for the personal law, it lies within the power of any man of full age and capacity to establish his domicile in any country he chooses, and thereby automatically to make the law of that country his personal law." R.H. Graveson, *Conflict of Laws* 188 (7th ed. 1974).

**personal liability.** See LIABILITY.

**personal liberty.** See LIBERTY.

**personal notice.** See NOTICE.

**personal property.** See PROPERTY.

**personal-property tax.** See TAX.

**personal recognizance.** See RECOGNIZANCE.

**personal replevin.** See REPLEVIN.

**personal representative.** See REPRESENTATIVE.

**personal right.** See RIGHT.

**personal security.** See SECURITY.

**personal service.** **1.** Actual delivery of the notice or process to the person to whom it is directed. — Also termed *actual service*. **2.** An act done personally by an individual. • In this sense, a personal service is an economic service involving either the intellectual or manual personal effort of an individual, as opposed to the salable product of the person's skill.

**personal servitude.** See SERVITUDE (1).

**personal statute.** See STATUTE.

**personal suretyship.** See SURETYSHIP.

**personal tort.** See TORT.

**personal trust.** See *private trust* under TRUST.

**personalty** (pərs-ən-əl-tee). Personal property as distinguished from real property. See *personal property* (1) under PROPERTY.

**quasi-personalty.** Things that are considered movable by the law, though fixed to real property either actually (as with a fixture) or fictitiously (as with a lease for years).

**personal warranty.** See WARRANTY (2).

**personam.** See IN PERSONAM.

**persona non grata** (pər-sohn-ə non grah-də), *n.* [Latin] An unwanted person; esp., a diplomat who is not acceptable to a host country. Pl. **personae non gratae.** Cf. PERSONA GRATA.

**persona standi in iudicio** (pər-soh-nə stan-di in joo-dish-ee-oh). [Law Latin] Capacity of standing in judgment; the right to appear in court.

**personation.** See IMPERSONATION.

**person-endangering state of mind.** An intent to kill, inflict great bodily injury, act in wanton disregard of an unreasonable risk, or perpetrate a dangerous felony. — Also termed *man-endangering state of mind*.

**person in loco parentis.** See PERSON.

**person of incidence.** See PERSON.

**person of inherence.** See PERSON.

**person of opposite sex sharing living quarters.** See POSSLQ.

**per stirpes** (pər stər-pee-z), *adv. & adj.* [Latin "by roots or stocks"] Proportionally divided between beneficiaries according to their deceased ancestor's share. — Also termed *in stirpes*. Cf. PER CAPITA.

**persuade, vb.** To induce (another) to do something <Steve persuaded his neighbor to sign the release after the accident>.

**persuasion.** The act of influencing or attempting to influence others by reasoned argument; the act of persuading.

**persuasion burden.** See BURDEN OF PERSUASION.



**persuasive authority.** See AUTHORITY (4).

**persuasive precedent.** See PRECEDENT.

**pertain, vb.** To relate to; to concern.

**pertinent, adj.** Pertaining to the issue at hand; relevant <pertinent testimony>.

**pertinent art.** See *analogous art* under ART.

**per totam curiam** (pər toh-təm kyoor-ee-əm). [Law Latin] By the whole court.

**per tout et non per my** (pər too[t] ay non pər mee). [Law French] By the whole and not by the half. • This phrase described the estate given to a husband and wife — both are seized of the entire estate. Cf. PER MY ET PER TOUT.

**perturbator** (pər-tər-bay-tər). [Law Latin] *Hist.* A man who disturbs the peace.

**perturbatrix** (pər-tər-bay-triks), *n.* [Law Latin] *Hist.* A woman who disturbs the peace.

**per universitatem** (pər yoo-nə-vər-sə-tay-təm). [Latin] *Civil law.* By an aggregate or whole; as an entirety. • This term describes the acquisition of an entire estate, esp. of an entire inheritance by universal succession.

**perverse verdict.** See VERDICT.

**per vivam vocem** (pər vi-vəm voh-səm). [Law Latin] By the living voice.

**petens** (pet-enz). [Latin] *Hist.* A demandant; a plaintiff in a real action.

**peter-pence.** *Hist.* A tax levied on each house in England and paid to the Pope, so called because it was collected on St. Peter's Day. — Also termed *hearth money*.

**petit** (pet-ee or pet-it), *adj.* [Law French “minor, small”] See PETTY.

**petit cape.** See *cape parvum* under CAPE.

**petite assize.** See ASSIZE (5).

**Petite policy.** The Department of Justice rule forbidding a federal prosecution after a previous state or federal prosecution based on the same acts unless (1) the prosecution has been approved by the Assistant Attorney General,

(2) there is a substantial federal interest supporting the prosecution, (3) the previous prosecution failed to vindicate the federal interest, and (4) there is sufficient evidence to sustain a conviction. *Petite v. United States*, 361 U.S. 529, 80 S.Ct. 450 (1960).

“(‘Petite Policy’) . . . The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions, to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s), to promote efficient utilization of Department resources, and to promote coordination and cooperation between federal and state prosecutors.” *United States Attorneys’ Manual* § 9-2.031 (Sept. 1997).

“In response to the Court’s continuing sensitivity to the fairness implications of the multiple prosecution power, the Justice Department adopted the policy of refusing to bring a federal prosecution following a state prosecution except when necessary to advance compelling interests of federal law enforcement. The *Petite* policy was designed to limit the exercise of the power to bring successive prosecutions for the same offense to situations comporting with the rationale for the existence of that power. Although not constitutionally mandated, this Executive policy serves to protect interests which, but for the ‘dual sovereignty’ principle inherent in our federal system, would be embraced by the Double Jeopardy Clause. In light of the parallel purposes of the Government’s *Petite* policy and the fundamental constitutional guarantee against double jeopardy, the federal courts should be receptive, not circumspect, when the Government seeks leave to implement that policy.” *Rinaldi v. United States*, 434 U.S. 22, 28-29, 98 S.Ct. 81, 85 (1977) (citation omitted).

**petitio** (pə-tish-ee-oh), *n.* [Latin] **1.** *Civil law.* A plaintiff’s suit, esp. in an action in rem. **2.** *Hist.* A petition or demand; esp., a count in a real action.

**petition, n. 1.** A formal written request presented to a court or other official body.

**involuntary petition.** A petition filed in a bankruptcy court by a creditor seeking to declare a debtor bankrupt. • This type of petition may be filed only under Chapter 7 or Chapter 11 of the Bankruptcy Code.

**juvenile petition.** A petition filed in a juvenile court, alleging delinquent conduct by the accused. • The accusations made in a juvenile petition are tried in an adjudicatory hearing. See *adjudicatory hearing* under HEARING.

**voluntary petition.** A petition filed with a bankruptcy court by a debtor seeking protection from creditors.

**2.** In some states, a lawsuit’s first pleading; COMPLAINT. — **petition, vb.**

**petition de droit.** See PETITION OF RIGHT.

**petitioner.** A party who presents a petition to a court or other official body, esp. when seeking relief on appeal. Cf. RESPONDENT (2).

**petition in bankruptcy.** A formal written request, presented to a bankruptcy court, seeking protection for an insolvent debtor. • The debtor (in a voluntary bankruptcy) or the debtor's creditors (in an involuntary bankruptcy) can file such a petition to initiate a bankruptcy proceeding.

**petition of right. 1.** (*cap.*) One of the four great charters of English liberty (3 Car. (1628)), establishing that "no man be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament." • The other three great charters are Magna Carta, the Habeas Corpus Act (31 Car. 2 (1679)), and the Bill of Rights (1 W. & M. (1689)). **2.** *Hist.* A proceeding in chancery by which a subject claims that a debt is owed by the Crown or that the Crown has broken a contract or wrongfully detained the subject's property. • Although the petition is addressed directly to the Crown, the courts adjudicate the claim just as in an action between private parties. — Also termed *petition de droit*.

**petit juror.** See JUROR.

**petit jury.** See JURY.

**petit larceny.** See LARCENY.

**petitor** (*pet-ə-tər*), *n.* [Latin] *Roman law.* A plaintiff in a civil action.

**petitorium** (*pet-ə-tor-ee-əm*). See *petitory action* under ACTION.

**petitory action.** See ACTION.

**petit serjeanty.** See SERJEANTY.

**pettifogger** (*pet-i-fog-ər*), *n.* **1.** A lawyer lacking in education, ability, sound judgment, or common sense. **2.** A lawyer who clouds an issue with insignificant details. — **pettifoggery** (*pet-i-fog-ər-ee*), *n.*

**petty, adj.** Relatively insignificant or minor <a petty crime>. Cf. GRAND.

**petty assize.** See ASSIZE (6).

**petty cash.** See CASH.

**petty jury.** See *petit jury* under JURY.

**petty larceny.** See *petit larceny* under LARCENY.

**petty offense.** See OFFENSE (1).

**petty officer.** See OFFICER (2).

**petty sessions.** *Hist. English law.* Sessions of justice-of-the-peace court held to try minor misdemeanors summarily (i.e., without a jury).

**petty treason.** See TREASON.

***p.fat.* abbr.** PRAEFATUS.

**phantom jury.** See *shadow jury* under JURY.

**phantom stock.** See STOCK.

**phantom stock plan.** A long-term benefit plan under which a corporate employee is given units having the same characteristics as the employer's stock shares. • It is termed a "phantom" plan because the employee doesn't actually hold any shares but instead holds the right to the value of those shares. — Also termed *shadow stock plan*.

**Philadelphia lawyer.** A shrewd and learned lawyer. • This term can have positive or negative connotations today, but when it first appeared (in colonial times), it carried only a positive sense deriving from Philadelphia's position as America's center of learning and culture.

**philosophie du droit.** See *ethical jurisprudence* under JURISPRUDENCE.

**philosophy of law.** See *general jurisprudence* (2) under JURISPRUDENCE.

**phonorecord** (*foh-noh-rek-ərd*). A physical object (such as a phonographic record, cassette tape, or compact disc) from which fixed sounds can be perceived, reproduced, or otherwise communicated directly or with a machine's aid. • The term is fairly common in copyright contexts since it is defined in the U.S. Copyright Act of 1976 (17 USCA § 101).

***p.h.v.* abbr.** PRO HAC VICE.

**phylacist** (fi-lə-sist), *n.* *Archaic.* A jailer. — Also spelled *phylasist*.

**physical cruelty.** See CRUELTY.

**physical custody.** See CUSTODY (1), (2).

**physical diagnosis.** See DIAGNOSIS.

**physical disability.** See DISABILITY (1).

**physical fact.** See FACT.

**physical-facts rule.** *Evidence.* The principle that oral testimony may be disregarded when it is inconsistent or irreconcilable with the physical evidence in the case. — Also termed *doctrine of incontrovertible physical facts*; *incontrovertible-physical-facts doctrine*.

**physical force.** See *actual force* under FORCE.

**physical harm.** See HARM.

**physical-impact rule.** See IMPACT RULE.

**physical impossibility.** See *factual impossibility* under IMPOSSIBILITY.

**physical incapacity.** See IMPOTENCE.

**physical injury.** See *bodily injury* under INJURY.

**physical-inventory accounting method.** See ACCOUNTING METHOD.

**physical necessity.** See NECESSITY.

**physical-proximity test.** *Criminal law.* A common-law test for the crime of attempt, focusing on how much more the defendant would have needed to do to complete the offense. See ATTEMPT (2).

**physical shock.** See SHOCK.

**physician-client privilege.** See *doctor-patient privilege* under PRIVILEGE (3).

**physician's directive.** See ADVANCE DIRECTIVE.

**P.I.** *abbr.* **1.** Personal injury. **2.** Private investigator.

**piacle** (pi-ə-kəl), *n.* *Archaic.* A serious crime.

**pia fraud** (pi-ə fraʊs). [Latin "pious fraud"] A subterfuge or evasion considered morally justifiable; esp., evasion or disregard of the law in the interests of a religious institution, such as the church's circumventing the mortmain statutes.

**picaroon** (pik-ə-roon). A robber or plunderer.

**picketing.** The demonstration by one or more persons outside a business or organization to protest the entity's activities or policies and to pressure the entity to meet the protesters' demands; esp., an employees' demonstration aimed at publicizing a labor dispute and influencing the public to withhold business from the employer. Cf. BOYCOTT; STRIKE.

**common-situs picketing.** The illegal picketing by union workers of a construction site, stemming from a dispute with one of the subcontractors.

**informational picketing.** Picketing to inform the public about a matter of concern to the union.

**organizational picketing.** Picketing by a union in an effort to persuade the employer to accept the union as the collective-bargaining agent of the employees; esp., picketing by members of one union when the employer has already recognized another union as the bargaining agent for the company's employees.

**secondary picketing.** The picketing of an establishment with which the picketing party has no direct dispute in order to pressure the party with which there is a dispute. See *secondary boycott* under BOYCOTT; *secondary strike* under STRIKE.

**unlawful picketing.** Picketing carried on in violation of law, as when the picketers use threats or violence to dissuade other employees from returning to work.

**pickpocket.** A thief who steals money or property from the person of another, usu. by stealth but sometimes by physical diversion such as bumping into or pushing the victim.

**piecemeal zoning.** See *partial zoning* under ZONING.

**piecework.** Work done or paid for by the piece or job.

**piepowder court** (pi-pow-dər). *Hist.* In medieval England, a court having jurisdiction over a fair or market and presided over by the organizer's steward. • The name is a corruption of

two French words (*pied* and *poudre*) meaning "dusty feet." — Also termed *court of piepowder*. — Also spelled *piepoudre*; *piedpoudre*; *pi-powder*; *py-powder*.

**piercing the corporate veil.** The judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful acts. — Also termed *disregarding the corporate entity*. See CORPORATE VEIL.

**pignorate** (*pig-nə-rayt*), *vb.* **1.** To give over as a pledge; to pawn. **2.** To take in pawn. — **pignorative**, *adj.* Cf. OPPIGNORATE.

**pignoratio** (*pig-nə-ray-shee-oh*), *n.* [Latin] **1.** *Roman law.* The act of handing something over to a creditor as security; the act of depositing as a pledge. **2.** *Civil law.* The impounding of another's cattle that have damaged property until the cattle's owner pays for the damage.

**pignoratitia actio** (*pig-nə-rə-tish-ee-ə ak-shee-oh*). [Latin] *Roman law.* An action founded on a pledge, either by the debtor (an action *directa*) or by a creditor (an action *contraria*). Cf. *cautio pignoratitia* under CAUTIO.

**pignorative contract.** See CONTRACT.

**pignoris capio** (*pig-nə-ris kap-ee-oh*). [Latin "taking a pledge"] *Roman law.* A form of extrajudicial execution by which a creditor took a pledge from a debtor's property.

**pignus** (*pig-nəs*), *n.* [Latin "pledge"] A bailment in which goods are delivered to secure the payment of a debt or performance of an engagement, accompanied by a power of sale in case of default. ● This type of bailment is for the benefit of both parties. — Also termed *pawn*; *pledge*.

**pignus giudiciale** (*pig-nəs joo-dish-ee-ay-lee*). [Latin] *Civil law.* The lien that a judgment creditor has on the property of the judgment debtor.

**pignus legale** (*pig-nəs lə-gay-lee*). [Latin] *Civil law.* A lien arising by operation of law, such as a landlord's lien on the tenant's property.

**pilferage** (*pil-fər-ij*), *n.* **1.** The act or an instance of stealing. **2.** The items stolen. — **pilfer** (*pil-fər*), *vb.* See LARCENY; THEFT.

**pillage** (*pil-ij*), *n.* **1.** The forcible seizure of another's property, esp. in war; esp., the wartime plundering of a city or territory. **2.** The property so seized or plundered; BOOTY. — **pillage**, *vb.* — Also termed *plunder*.

**pillory** (*pil-ə-ree*), *n.* *Hist.* A wooden framework with holes through which an offender's head and hands are placed. ● A person put in a pillory usu. had to stand rather than sit (as with the stocks). Cf. STOCKS.

**pilot.** See COMPULSORY PILOT; VOLUNTARY PILOT.

**pilotage** (*pi-lə-tij*). **1.** The navigating of vessels; the business of navigating vessels. **2.** Compensation that a pilot receives for navigating a vessel, esp. into and out of harbor or through a channel or passage.

**compulsory pilotage.** A requirement, imposed by law in some jurisdictions, that vessels approaching or leaving a harbor must take on a licensed pilot to guide the vessel into or out of the harbor.

**half-pilotage.** Compensation equaling half the value of services that a pilot has offered to perform. ● Shipowners can avoid compulsory pilotage in some jurisdictions by payment of half-pilotage.

**pimp**, *n.* A person who solicits customers for a prostitute, usu. in return for a share of the prostitute's earnings. — **pimp**, *vb.* See PANDERING (1). Cf. BAWD.

**pincite.** See *pinpoint citation* under CITATION.

**Pinkerton rule.** *Criminal law.* The doctrine imposing liability on a conspirator for all offenses committed in furtherance of the conspiracy, even if those offenses are actually performed by coconspirators. *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180 (1946).

**pink sheet.** A daily publication listing over-the-counter stocks, their market-makers, and their prices. ● Printed on pink paper, pink sheets are published by the National Quotation Bureau, a private company. — Also termed *National Daily Quotation Service*.

**pink slip.** *Slang.* A notice of employment termination given to an employee by an employer.

**pinpoint citation.** See CITATION.

**pioneer drug.** See DRUG.

**pioneer patent.** See *basic patent* under PATENT (3).

**Pipe Rolls.** *Hist.* The Exchequer's records of royal revenue, including revenue from feudal holdings, judicial fees, and tax revenue collected by the sheriffs. • The Pipe Rolls comprise 676 rolls, covering the years 1131 and 1156 to 1833 (except for gaps in 1216 and 1403). — Also termed *Great Rolls of the Exchequer*.

"The Pipe rolls (so called possibly because of their pipe-like appearance when rolled up and stacked) were the rolls of the Exchequer and consist of parchment skins sewn together. Roger of Salisbury, Henry I's Treasurer, had established a rudimentary national financial system and the Pipe roll recording financial details at the end of Henry's reign is in existence . . . . The rolls contain much information concerning royal debtors, administration, and personnel of the King's government." L.B. Curzon, *English Legal History* 64–65 (2d ed. 1979).

**piracy, n.** 1. Robbery, kidnapping, or other criminal violence committed at sea. 2. A similar crime committed aboard a plane or other vehicle; hijacking.

**air piracy.** The crime of using force or threat to seize control of an aircraft; the hijacking of an aircraft, esp. one in flight. — Also termed *aircraft piracy*.

3. The unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law. See INFRINGEMENT. — **pirate, vb.** — **piratical** (pī-rat-ə-kəl), *adj.* — **pirate, n.**

"[T]he test of piracy [is] not whether the identical language, the same words, are used, but whether the substance of the production is unlawfully appropriated." Eaton S. Drone, *A Treatise on the Law of Property in Intellectual Productions* 97 (1879).

**piscary.** 1. See FISHERY. 2. See *common of piscary* under COMMON (1).

**PITI.** *abbr.* Principal, interest, taxes, and insurance — the components of a monthly mortgage payment.

**P.J.** See *presiding judge* under JUDGE.

**PKPA.** *abbr.* PARENTAL KIDNAPPING PREVENTION ACT.

**pl.** *abbr.* PLACITUM (8).

**P.L.** *abbr.* PUBLIC LAW.

**placard** (plak-ahrd or plak-ərd). 1. *Hist.* An official document, such as a license or permit. 2. An advertisement posted in a public place.

**place land.** See LAND.

**placement.** 1. The act of selling a new issue of securities or arranging a loan or mortgage. 2. The act of finding employment for a person, esp. as done by an employment agency.

**place of abode.** A person's residence or domicile. See RESIDENCE; DOMICILE.

**place of business.** A location at which one carries on a business. Cf. DOMICILE (2).

**place of contracting.** The country or state in which a contract is entered into.

**place of delivery.** The place where goods sold are to be sent by the seller. • If no place is specified in the contract, the seller's place of business is usu. the place of delivery. UCC § 2–308.

**place of employment.** The location at which work done in connection with a business is carried out; the place where some process or operation related to the business is conducted.

**place-of-wrong law.** See LEX LOCI DELICTI.

**place-of-wrong rule.** See LEX LOCI DELICTI.

**placer claim.** See MINING CLAIM.

**placita** (plas-ə-tə), *n.* [Latin] *pl.* PLACITUM.

**placitabile** (plas-ə-tay-bə-lee), *adj.* [Law Latin] That may be pleaded; pleadable.

**placita communia** (plas-ə-tə kə-myoo-nee-ə). [Latin] Common pleas; civil actions between subject and subject.

**placita coronae** (plas-ə-tə kə-roh-nee). [Latin] Pleas of the Crown; criminal actions.

**placita juris** (plas-ə-tə joor-is). [Law Latin] "pleas of law" *Hist.* Positive statements or guiding principles of the law, in contrast to legal conclusions or maxims.

**placitare** (plas-ə-tair-ee), *vb.* [Law Latin] To plead; to bring an action in a court of law.

**placitory** (plas-ə-tor-ee), *adj.* [Law Latin] Of or relating to pleas or pleading.

**placitum** (plas-ə-təm), *n.* [Latin] *Hist.* **1.** Roman law. An agreement between parties. **2.** Roman law. An imperial constitution. **3.** A judicial decision. **4.** A court; a judicial tribunal. **5.** A judicial proceeding; a trial. **6.** A fine, mulct, or pecuniary punishment. **7.** A pleading or plea. **8.** A paragraph or section of a title or page where the point decided in a case is set forth separately. — Abbr. (in sense 8) pl. Pl. **placita.**

**placitum fractum** (plas-ə-təm frak-təm). [Law Latin] *Hist.* A day past or lost to the defendant.

**placitum nominatum** (plas-ə-təm nom-ə-nay-təm). [Law Latin] *Hist.* The day appointed for a defendant to appear and plead.

**plagiarism** (play-jə-riz-əm), *n.* The act or an instance of copying or stealing another's words or ideas and attributing them as one's own. — **plagiarize** (play-jə-riz), *vb.* — **plagiarist** (play-jə-rist), *n.* Cf. INFRINGEMENT.

"Plagiarism, which many people commonly think has to do with copyright, is not in fact a legal doctrine. True plagiarism is an ethical, not a legal, offense and is enforceable by academic authorities, not courts. Plagiarism occurs when someone — a hurried student, a neglectful professor, an unscrupulous writer — falsely claims someone else's words, whether copyrighted or not, as his own. Of course, if the plagiarized work is protected by copyright, the unauthorized reproduction is also a copyright infringement." Paul Goldstein, *Copyright's Highway* 12 (1994).

"That the supporting evidence for the accusation of plagiarism may on occasion be elusive, insufficient, or uncertain, is not the same as thinking that the definition of plagiarism is uncertain. The gray areas may remain resistant to adjudication without being resistant to definition. It may be perfectly clear what constitutes plagiarism ('using the work of another *with an intent to deceive*') without its being clear that what faces us is truly a case of this." Christopher Ricks, "Plagiarism," 97 *Proceedings of the British Academy* 149, 151 (1998).

**plagiarius** (play-jee-air-ee-əs), *n.* [Latin] Roman law. A kidnapper.

**plagium** (play-jee-əm), *n.* [Latin] Roman law. The act of kidnapping, which included harboring another's slave.

**plaideur** (play- or ple-dər), *n.* [Law French "pleader"] *Archaic.* An attorney at law; an advocate.

**plaidoyer** (ple-dwah-yay), *n.* [French] *Hist.* An advocate's plea.

**plain bond.** See DEBENTURE.

**plain error.** See ERROR (2).

**plain-feel doctrine.** *Criminal procedure.* The principle that a police officer, while conducting a legal pat-down search, may seize any contraband that the officer can clearly identify, by touch, as being illegal or incriminating. — Also termed *plain-touch doctrine.*

**plain-language law.** Legislation requiring non-technical, readily comprehensible language in consumer contracts such as residential leases or insurance policies. ● Many of these laws have genuinely simplified the needlessly obscure language in which consumer contracts have traditionally been couched.

**plain-language movement.** **1.** The loosely organized campaign to encourage legal writers and business writers to write clearly and concisely — without legalese — while preserving accuracy and precision. **2.** The body of persons involved in this campaign.

**plain meaning.** See MEANING.

**plain-meaning rule.** The rule that if a writing, or a provision in a writing, appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence. ● Though often applied, this rule is often condemned as simplistic because the meaning of words varies with the verbal context and the surrounding circumstances, not to mention the linguistic ability of the users and readers (including judges). — Also termed *ordinary-meaning rule.* Cf. GOLDEN RULE; MISCHIEF RULE; EQUITY-OF-THE STATUTE RULE.

"On its positive side, the plain meaning rule states a tautology: Words should be read as saying what they say. The rule tells us to respect meaning but it does so without disclosing what the specific meaning is. At best, it reaffirms the preeminence of the statute over materials extrinsic to it. In its negative aspect, on the other hand, the rule has sometimes been used to read ineptly expressed language out of its proper context, in violation of established principles of meaning and communication. To this extent it is an impediment to interpretation." Reed Dickerson, *The Interpretation and Application of Statutes* 229 (1975).

**plain-sight rule.** See PLAIN-VIEW DOCTRINE.

**plaint.** **1.** *Archaic.* A complaint, esp. one filed in a replevin action. See COMPLAINT (1). **2.** *Civil law.* A complaint or petition, esp. one intended to set aside an allegedly invalid testament.

**plaintiff.** The party who brings a civil suit in a court of law. — Abbr. *pltf.* Cf. DEFENDANT.

**plaintiff in error.** *Archaic.* See APPELLANT; PETITIONER.

**plaintiff's-viewpoint rule.** The principle that courts should measure the amount in controversy in a case by analyzing only the amount of damages claimed by the plaintiff.

**plain-touch doctrine.** See PLAIN-FEEL DOCTRINE.

**plain-vanilla swap.** See INTEREST-RATE SWAP.

**plain-view doctrine.** *Criminal procedure.* The rule permitting a police officer's warrantless seizure and use as evidence of an item observed in plain view from a lawful position or during a legal search when the officer has probable cause to believe that the item is evidence of a crime. — Also termed *clear-view doctrine*; *plain-sight rule*. Cf. OPEN-FIELDS DOCTRINE.

**PLAM.** See *price-level-adjusted mortgage* under MORTGAGE.

**plan, n.** 1. BANKRUPTCY PLAN. 2. EMPLOYEE BENEFIT PLAN.

**planned obsolescence.** See OBSOLESCENCE.

**planned-unit development.** A land area zoned for a single-community subdivision with flexible restrictions on residential, commercial, and public uses. — Abbr. PUD. Cf. RESIDENTIAL CLUSTER.

**planning board.** A local government body responsible for approving or rejecting proposed building projects. • In most jurisdictions, the planning board's decisions are subject to the review of the city council. — Also termed *planning commission*.

**plan of rehabilitation.** See BANKRUPTCY PLAN.

**plan of reorganization.** See BANKRUPTCY PLAN.

**plan-of-the-convention doctrine.** The principle that each U.S. state, by ratifying the U.S. Constitution, has consented to the possibility of being sued by each of the other states, and has no immunity from such a suit under the 11th Amendment.

**plant patent.** See PATENT (3).

**plat. 1.** A small piece of land; PLOT (1). **2.** A map describing a piece of land and its features, such as boundaries, lots, roads, and easements.

**platform.** A statement of principles and policies adopted by a political party as the basis of the party's appeal for public support.

**plat map.** A document that gives the legal descriptions of pieces of real property by lot, street, and block number. • A plat map is usually drawn after the property has been described by some other means, such as a government survey. Once a plat map is prepared, property descriptions are defined by referring to the appropriate map.

**plea, n.** 1. An accused person's formal response of "guilty," "not guilty," or "no contest" to a criminal charge.

**blind plea.** A guilty plea made without the promise of a concession from either the judge or the prosecutor. Cf. *negotiated plea*.

**guilty plea.** An accused person's formal admission in court of having committed the charged offense. • A guilty plea is usually part of a plea bargain. It must be made voluntarily, and only after the accused has been informed of and understands his or her rights. A guilty plea ordinarily has the same effect as a guilty verdict and conviction after a trial on the merits.

**insanity plea.** See INSANITY DEFENSE.

**negotiated plea.** The plea agreed to by a criminal defendant and the prosecutor in a plea bargain. See PLEA BARGAIN. Cf. *blind plea*.

**not-guilty plea.** An accused person's formal denial in court of having committed the charged offense. • The prosecution must then prove all elements of the charged offense beyond a reasonable doubt if the defendant is to be convicted.

**2.** At common law, the defendant's responsive pleading in a civil action. Cf. DECLARATION (7).

**3.** A factual allegation offered in a case; a pleading. Cf. DEMURRER.

**affirmative plea.** See *pure plea*.

**anomalous plea.** An equitable plea consisting in both affirmative and negative matter. • That is, it is partly confession and avoidance and partly traverse. The plea is appropriate when the plaintiff, in the bill, has anticipated the plea, and the defendant then traverses the anticipatory matters. — Also termed *plea not pure*. Cf. *pure plea*.

**common plea.** 1. A common-law plea in a civil action as opposed to a criminal prosecution. — Also termed *common cause*; *common suit*. 2. *Hist.* A plea made by a commoner.

“By ‘common pleas’ Magna Carta meant no more than ordinary pleas between commoners.” Alan Harding, *A Social History of English Law* 51 (1966).

**dilatory plea** (dil-ə-tor-ee). A plea that does not challenge the merits of a case but that seeks to delay or defeat the action on procedural grounds.

“Dilatory pleas are those which do not answer the general right of the plaintiff, either by denial or in confession and avoidance, but assert matter tending to defeat the particular action by resisting the plaintiff’s present right of recovery. They may be divided into two main classes: (1) Pleas to the jurisdiction and venue. (2) Pleas in abatement. A minor class, sometimes recognized, is pleas in suspension of the action.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 220, at 382 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**double plea.** A plea consisting in two or more distinct grounds of complaint or defense for the same issue. Cf. *alternative pleading* under PLEADING (2); DUPLICITY (2).

**issuable plea.** A plea on the merits presenting a complaint to the court. Cf. *issuable defense* under DEFENSE (1).

**jurisdictional plea.** A plea asserting that the court lacks jurisdiction either over the defendant or over the subject matter of the case. — Also termed *plea to the jurisdiction*.

**negative plea.** A plea that traverses some material fact or facts stated in the bill.

**nonissuable plea.** A plea on which a court ruling will not decide the case on the merits, such as a plea in abatement.

**peremptory plea.** A plea that responds to the merits of the plaintiff’s claim.

**plea in abatement.** A plea that objects to the place, time, or method of asserting the plaintiff’s claim but does not dispute the claim’s merits. • A defendant who successfully asserts a plea in abatement leaves the claim open for continuation in the current action or reassertion in a later action if the defect is cured.

**plea in bar.** See PLEA IN BAR.

**plea in confession and avoidance.** See CONFESSION AND AVOIDANCE.

**plea in discharge.** A plea alleging that the defendant has previously satisfied and discharged the plaintiff’s claim.

**plea in equity.** A special defense relying on one or more reasons why the suit should be dismissed, delayed, or barred. • The various

kinds are (1) pleas to the jurisdiction, (2) pleas to the person, (3) pleas to the form of the bill, and (4) pleas in bar of the bill. • Pleas in equity generally fall into two classes: *pure pleas* and *anomalous pleas*.

**plea in estoppel.** *Common-law pleading.* A plea that neither confesses nor avoids but pleads a previous inconsistent act, allegation, or denial on the part of the adverse party to preclude that party from maintaining an action or defense.

**plea in reconvention.** *Civil law.* A plea that sets up a new matter, not as a defense, but as a cross-complaint, setoff, or counterclaim.

**plea in suspension.** A plea that shows some ground for not proceeding in the suit at the present time and prays that the proceedings be stayed until that ground is removed, such as a party’s being a minor or the plaintiff’s being an alien enemy.

**plea not pure.** See *anomalous plea*.

**plea of confession and avoidance.** See CONFESSION AND AVOIDANCE.

**plea of privilege.** A plea that raises an objection to the venue of an action. See CHANGE OF VENUE (1).

**plea of release.** A plea that admits the claim but sets forth a written discharge executed by a party authorized to release the claim. See RELEASE (2).

**plea puis darrein continuance** (pwis dar-ayn kən-tin-yoo-ənts). [Law French “plea since the last continuance”] A plea that alleges new defensive matter that has arisen during a continuance of the case and that did not exist at the time of the defendant’s last pleading.

**plea to further maintenance to the action.** *Hist.* A defensive plea asserting that events occurring after the commencement of the action necessitate its dismissal. • The plea is obsolete because of the pleading requirements in federal and state rules of civil procedure.

**plea to the declaration.** A plea in abatement that objects to the declaration and applies immediately to it. — Also termed *plea to the count*.

**plea to the jurisdiction.** See *jurisdictional plea*.

**plea to the person of the defendant.** A plea in abatement alleging that the defendant has a legal disability to be sued.



**plea to the person of the plaintiff.** A plea in abatement alleging that the plaintiff has a legal disability to sue.

**plea to the writ.** A plea in abatement that objects to the writ (summons) and applies (1) to the form of the writ for a matter either apparent on the writ's face or outside the writ, or (2) to the way in which the writ was executed or acted on.

**pure plea.** An equitable plea that affirmatively alleges new matters that are outside the bill. • If proved, the effect is to end the controversy by dismissing, delaying, or barring the suit. A pure plea must track the allegations of the bill, not evade it or mistake its purpose. Originally, this was the only plea known in equity. — Also termed *affirmative plea*. Cf. *anomalous plea*.

**rolled-up plea.** *Defamation.* A defendant's plea claiming that the statements complained of are factual and that, to the extent that they consist of comment, they are fair comment on a matter of public interest. See FAIR COMMENT.

**special plea.** A plea alleging one or more new facts rather than merely disputing the legal grounds of the action or charge. • All pleas other than general issues are special pleas. See *general issue* under ISSUE (1).

**plea bargain, n.** A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usu. a more lenient sentence or a dismissal of the other charges. — Also termed *plea agreement*; *negotiated plea*. — **plea-bargain, vb.** — **plea-bargaining, n.**

**plead, vb.** 1. To make a specific plea, esp. in response to a criminal charge <he pleaded not guilty>. 2. To assert or allege in a pleading <fraud claims must be pleaded with particularity>. 3. To file or deliver a pleading <the plaintiff hasn't pleaded yet>.

**pleader, n.** 1. A party who asserts a particular pleading. 2. A person who pleads in court on behalf of another. 3. *Hist.* At common law, a person who (though not an attorney) specialized in preparing pleadings for others. — Also termed *special pleader*. 4. *Hist.* NARRATOR.

**pleading, n.** 1. A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses. • In federal civil proce-

dures, the main pleadings are the plaintiff's complaint and the defendant's answer.

**accusatory pleading.** An indictment, information, or complaint by which the government begins a criminal prosecution.

**amended pleading.** A pleading that replaces an earlier pleading and that contains matters omitted from or not known at the time of the earlier pleading.

"An amendment is the correction of an error or the supplying of an omission in the process or pleadings. An amended pleading differs from a supplemental pleading in that the true function of the latter is to spread upon the record matter material to the issue which has arisen subsequent to the filing of a pleading, while matter of amendment purely is matter that might *well have been pleaded at the time the pleading sought to be amended was filed*, but which through error or inadvertence was omitted or misstated. It has been declared that the allowance of amendments is incidental to the exercise of all judicial power and is indispensable to the ends of justice." Eugene A. Jones, *Manual of Equity Pleading and Practice* 68 (1916).

**anomalous pleading.** A pleading that is partly affirmative and partly negative in its allegations.

**articulated pleading.** A pleading that states each allegation in a separately numbered paragraph.

**defective pleading.** A pleading that fails to meet minimum standards of sufficiency or accuracy in form or substance.

**responsive pleading.** A pleading that replies to an opponent's earlier pleading. See ANSWER.

**sham pleading.** An obviously frivolous or absurd pleading that is made only for purposes of vexation or delay. — Also termed *sham plea*; *false plea*.

**shotgun pleading.** A pleading that encompasses a wide range of contentions, usu. supported by vague factual allegations.

**supplemental pleading.** A pleading that either corrects a defect in an earlier pleading or addresses facts arising since the earlier pleading was filed. • Unlike an amended pleading, a supplemental pleading merely adds to the earlier pleading and does not replace it.

2. A system of defining and narrowing the issues in a lawsuit whereby the parties file formal documents alleging their respective positions.

**alternative pleading.** A form of pleading whereby the pleader alleges two or more independent claims or defenses that are not necessarily consistent with each other, such as

alleging both intentional infliction of emotional distress and negligent infliction of emotional distress based on the same conduct. Fed. R. Civ. P. 8(e)(2). Cf. DUPLICITY (2); *double plea* under PLEA (3).

**artful pleading.** A plaintiff's disguised phrasing of a federal claim as solely a state-law claim in order to prevent a defendant from removing the case from state court to federal court.

**code pleading.** A procedural system requiring that the pleader allege merely the facts of the case giving rise to the claim, not the legal conclusions necessary to sustain the claim. — Also termed *fact pleading*. Cf. *issue pleading*.

**common-law pleading.** The system of pleading historically used in the three common-law courts of England (the King's Bench, the Common Pleas, and the Exchequer) up to 1873.

**equity pleading.** The system of pleading used in courts of equity. • In most jurisdictions, rules unique to equity practice have been largely supplanted by rules of court, esp. where law courts and equity courts have merged.

**issue pleading.** The common-law method of pleading, the main purpose of which was to frame an issue. Cf. *code pleading*.

**notice pleading.** A procedural system requiring that the pleader give only a short and plain statement of the claim showing that the pleader is entitled to relief, and not a complete detailing of all the facts. Fed. R. Civ. P. 8(a).

**special pleading.** See SPECIAL PLEADING.

3. The legal rules regulating the statement of the plaintiff's claims and the defendant's defenses <today, pleading is a much simpler subject than it was in former years>.

**pleading the baby act.** See BABY ACT, PLEADING THE.

**pleading the Fifth.** The act or an instance of asserting one's right against self-incrimination under the Fifth Amendment. — Also termed *taking the Fifth*. See RIGHT AGAINST SELF-INCRIMINATION.

**plead over, vb.** 1. To fail to notice a defective allegation in an opponent's pleading. 2. *Hist.* To plead the general issue after a defendant has had a dilatory plea overruled. See AIDER BY PLEADING OVER.

**plea in abatement.** See PLEA (3).

**plea in bar.** A plea that seeks to defeat the plaintiff's or prosecutor's action completely and permanently.

**general plea in bar.** A criminal defendant's plea of not guilty by which the defendant denies every fact and circumstance necessary to be convicted of the crime charged.

**special plea in bar.** A plea that, rather than addressing the merits and denying the facts alleged, sets up some extrinsic fact to show why a criminal defendant cannot be tried for the offense charged. • Examples include the plea of *autrefois acquit* and the plea of pardon.

**plea in confession and avoidance.** See CONFESSION AND AVOIDANCE.

**plea in discharge.** See PLEA (3).

**plea in equity.** See PLEA (3).

**plea in reconvention.** See PLEA (3).

**plea in suspension.** See PLEA (3).

**plea not pure.** See *anomalous plea* under PLEA (3).

**plea of confession and avoidance.** See CONFESSION AND AVOIDANCE.

**plea of pregnancy.** *Hist.* A plea of a woman convicted of a capital crime to stay her execution until she gives birth. See *jury of matrons* under JURY.

**plea of privilege.** See PLEA (3).

**plea of release.** See PLEA (3).

**plea of sanctuary.** See DECLINATORY PLEA.

**plea of tender.** At common law, a pleading asserting that the defendant has consistently been willing to pay the debt demanded, has offered it to the plaintiff, and has brought the money into court ready to pay the plaintiff. See TENDER.

**plea puis darrein continuance.** See PLEA (3).

**pleasure appointment.** The assignment of someone to employment that can be taken

away at any time, with no requirement for notice or a hearing.

**plea to further maintenance to the action.**

See PLEA (3).

**plea to the count.** See *plea to the declaration* under PLEA (3).

**plea to the declaration.** See PLEA (3).

**plea to the jurisdiction.** See *jurisdictional plea* under PLEA (3).

**plea to the person of the defendant.** See PLEA (3).

**plea to the person of the plaintiff.** See PLEA (3).

**plea to the writ.** See PLEA (3).

**plebiscite** (pleb-ə-sit or pleb-ə-sit), *n.* **1.** A binding or nonbinding referendum on a proposed law, constitutional amendment, or significant public issue. **2.** *Int'l law.* A direct vote of a country's electorate to decide a question of public importance, such as union with another country or a proposed change to the constitution. — **plebiscitary** (plə-bi-sə-ter-ee), *adj.*

**plebiscitum** (pleb-ə-si-təm), *n.* [Latin] *Roman law.* An enactment passed at the request of a tribune by the assembly of the common people (the *concilium plebis*). Pl. **plebiscita**. See CONCILIIUM PLEBIS.

**plebs** (plebz), *n.* [Latin] *Roman law.* The common people in ancient Rome; the general body of citizens. Pl. **plebes** (plee-beez).

**pledge**, *n.* **1.** A bailment or other deposit of personal property to a creditor as security for a debt or obligation; PAWN (2). Cf. LIEN. **2.** The item of personal property so deposited; PAWN (1). **3.** Broadly, the act of providing something as security for a debt or obligation. **4.** The thing so provided. **5.** *Hist.* A person who acts as a surety for the prosecution of a lawsuit. • In early practice, pledges were listed at the end of the declaration. Over time the listing of pledges became a formality, and fictitious names (such as "John Doe" or "Richard Roe") were allowed. — **pledge**, *vb.* — **pledgeable**, *adj.*

"A pledge is something more than a mere lien and something less than a mortgage." Leonard A. Jones, *A Treatise on the Law of Collateral Securities and Pledges* § 2, at 4 (Edward M. White rev., 3d ed. 1912).

"A pledge is a bailment of personal property to secure an obligation of the bailor. If the purpose of the transaction is to transfer property for security only, then the courts will hold the transaction a pledge, even though in form it may be a sale or other out-and-out transfer." Ray Andrews Brown, *The Law of Personal Property* § 128, at 622 (2d ed. 1936).

"The pledge is as old as recorded history and is still in use, as the presence of pawnbrokers attests. In this transaction the debtor borrows money by physically transferring to a secured party the possession of the property to be used as security, and the property will be returned if the debt is repaid. Since the debtor does not retain the use of pledged goods, this security device has obvious disadvantages from the debtor's point of view." Ray D. Henson, *Secured Transactions* § 3-1, at 17 (3d ed. 1983).

**pledged account.** See ACCOUNT.

**pledgee.** One with whom a pledge is deposited.

**pledgery.** *Archaic.* See SURETYSHIP (1).

**pledgor.** One who gives a pledge to another. — Also spelled *pledger*.

**plegiis acquietandis.** See DE PLEGIIS ACQUIETANDIS.

**plena aetas** (plee-nə ee-tas). [Latin] Full age. See AGE OF MAJORITY.

**plena forisfactura** (plee-nə for-is-fak-chər-ə). [Latin "complete forfeiture"] A forfeiture of all that one possesses.

**plena probatio.** See *probatio plena* under PROBATIO.

**plenarty** (plee-nər-tee or plen-ər-tee), *n.* *Hist.* The condition of being full or occupied; esp., the state of a benefice that is occupied by an incumbent.

**plenary** (plee-nə-ree or plen-ə-ree), *adj.* **1.** Full; complete; entire <plenary authority>. **2.** (Of an assembly) to be attended by all members or participants <plenary session>.

**plenary action.** See ACTION.

**plenary confession.** See CONFESSION.

**plenary jurisdiction.** See JURISDICTION.

**plenary power.** See POWER.

**plenary session.** See SESSION.

**plenary suit.** See SUIT.

**plene** (plee-nee), *adv.* [Latin] Fully; completely; sufficiently.

**plene administravit** (plee-nee ad-min-ə-stray-vit). [Law Latin “he has fully administered”] *Hist.* A defensive plea in which an executor or administrator asserts that no assets remain in the estate to satisfy the plaintiff’s demand.

**plene administravit praeter** (plee-nee ad-min-ə-stray-vit prēe-tər). [Law Latin “he has fully administered, except”] *Hist.* A defensive plea in which an executor or administrator asserts that no assets remain in the estate, except a stated few that are insufficient to satisfy the plaintiff’s demand.

**plene computavit** (plee-nee kom-pyoo-tay-vit). [Law Latin “he has fully accounted”] *Hist.* A plea in an action of account render, alleging that the defendant has fully accounted. See ACCOUNTING (3).

**plenipotentiary** (plen-ə-pə-ten-shee-er-ee). A person who has full power to do a thing; a person fully commissioned to act for another. See *minister plenipotentiary* under MINISTER.

**plenum dominium.** See *dominium plenum* under DOMINIUM (1).

**plevin** (plev-in), *n.* *Archaic.* An assurance or warrant; a pledge.

**Plimssoll marks.** See LOAD LINE.

**plot**, *n.* **1.** A measured piece of land; LOT (1). **2.** A plan forming the basis of a conspiracy.

**plot plan.** A plan that shows a proposed or present use of a plot of land, esp. of a residential area.

**plottage.** The increase in value achieved by combining small, undeveloped tracts of land into larger tracts of land.

**plow back**, *vb.* To reinvest earnings and profits into a business instead of paying them out as dividends or withdrawals.

**plowbote.** See BOTE (1).

**plowland.** See CARUCATE.

**plowman’s fee.** See FEE (2).

**pltf.** *abbr.* PLAINTIFF.

**plunder.** See PILLAGE.

**plunderage.** *Maritime law.* The embezzling of goods on a ship.

**plurality.** A large number or quantity that does not constitute a majority; a number greater than another, regardless of the margin <a four-member plurality of the Supreme Court agreed with this view, which gets more votes than any other>. Cf. MAJORITY (2).

**plurality opinion.** See OPINION (1).

**plural marriage.** See MARRIAGE (1).

**pluries** (pluur-ee-eez), *n.* [Latin “many times”] A third or subsequent writ issued when the previous writs have been ineffective; a writ issued after an alias writ. — Also termed *pluries writ*.

**plurinationl administrative institution.** *Int’l law.* An entity designed to perform transnational administrative activities when politically oriented international organizations and traditional international agreements are unsuitable. ● These institutions usu. arise in fields where transnational arrangements are necessary (such as natural-resource management, transportation, or utilities), and they are often organized as international corporations, national agencies, or private corporations.

**plus petitio** (pləs pə-tish-ee-oh). [Latin] *Roman law.* The mistake of claiming more in one’s pleadings than is due. ● This was fatal to the action under classical law. Under Justinian, however, a claimant could continue the action, but could be liable for treble damages to any person injured by the overstated claim.

**p.m.** *abbr.* POST MERIDIEM.

**PM.** *abbr.* **1.** POSTMASTER. **2.** PRIME MINISTER.

**PMI.** *abbr.* Private mortgage insurance. See *mortgage insurance* under INSURANCE.

**PMM.** See *purchase-money mortgage* under MORTGAGE.

**PMRT.** See *purchase-money resulting trust* under TRUST.

**PMSI.** See *purchase-money security interest* under SECURITY INTEREST.

**P.O. abbr.** Post office.

**poaching, n.** The illegal taking or killing of fish or game on another's land. — **poach, vb.**

**pocket immunity.** See IMMUNITY (3).

**pocket money.** See HAT MONEY.

**pocket part.** A supplemental pamphlet inserted usu. into the back inside cover of a lawbook, esp. a treatise or code, to update the material in the main text until the publisher issues a new edition of the entire work. • Legal publishers frequently leave a little extra room inside their hardcover books so that pocket parts may later be added.

**pocket veto.** See VETO.

**P.O.D. abbr.** Pay on delivery.

**poena (pee-nə).** [Latin] Punishment; penalty.

**poena corporalis (pee-nə kor-pə-ray-lis).** [Latin] Corporal punishment.

**poenae secundarum nuptiarum (pee-nee sek-ən-dāir-əm nəp-shee-air-əm), n.** [Latin "penalties of second marriages"] *Roman law.* Disabilities that, for the protection of children of a first marriage, are imposed on a parent who remarries. See PARENS BINUBUS.

"If either parent re-married, the interests of the children of the first marriage were protected (in the later Roman Empire) by a number of legal rules the effect of which was to confer certain benefits on the children and to impose certain disabilities — the so-called poenae secundarum nuptiarum — on the parens binubus. The most important of these rules was that which declared that all the property which the parens binubus had acquired gratuitously from his or her deceased spouse, whether by way of gift, dos, donatio propter nuptias, or testamentary disposition — the so-called lucra nuptialia — should become ipso jure the property of the children of the first marriage at the moment of the conclusion of the second marriage, and that only a usufruct should be reserved for the parens binubus." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 477 (James Crawford Ledlie trans., 3d ed. 1907).

**poenalis (pi-nay-lis), adj.** [Latin] *Roman law.* Imposing a penalty; penal.

**poena pilloralis (pee-nə pil-ə-ray-lis).** [Latin] *Hist.* Punishment of the pillory.

**poenitentia (pee-nə-ten-shee-ə or pen-ə).** [Latin] *Roman law.* Reconsideration; changing one's mind.

**pointing (pin-ding).** *Scots law.* A judgment creditor's seizing of a debtor's property to satisfy the debt.

**point, n.** **1.** A pertinent and distinct legal proposition, issue, or argument <point of error>. **2.** One percent of the face value of a loan (esp. a mortgage loan), paid up front to the lender as a service charge or placement fee <the borrower hoped for only a two-point fee on the mortgage>. — Also termed *mortgage point*. See MORTGAGE DISCOUNT. **3.** A unit used for quoting stock, bond, or commodity prices <the stock closed up a few points today>.

**point-and-click agreement.** An electronic version of a shrink-wrap license in which a computer user agrees to the terms of an electronically displayed agreement by pointing the mouse to a particular location on the screen and then clicking. See *shrink-wrap license* under LICENSE.

**point of error.** An alleged mistake by a lower court asserted as a ground for appeal. See ERROR (2); WRIT OF ERROR.

**point of law.** A discrete legal proposition at issue in a case.

**reserved point of law.** An important or difficult point of law that arises during trial but that the judge sets aside for future argument or decision so that testimony can continue.

**point system.** *Criminal law.* A system that assigns incremental units to traffic violations, the accumulation of a certain number within a year resulting in the automatic suspension of a person's driving privileges.

**poisonous-tree doctrine.** See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

**poison pill.** A corporation's defense against an unwanted takeover bid whereby shareholders are granted the right to acquire equity or debt securities at a favorable price to increase the bidder's acquisition costs. See SHARK REPELLER. Cf. PORCUPINE PROVISION.

"Another recent tactic is the 'poison pill' which is a conditional stock right that is triggered by a hostile takeover and makes the takeover prohibitively expensive. The poison pill is a variation of the scorched earth

defense. . . ." Thomas Lee Hazen, *The Law of Securities Regulation* § 11.20, at 575 (2d ed. 1990).

**police, n.** **1.** The governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime. **2.** The officers or members of this department.

**police blotter.** See ARREST RECORD.

**police court.** See *magistrate's court* (1) under COURT.

**police jury.** *Civil law.* The governing body of a parish.

**police justice.** See *police magistrate* under MAGISTRATE.

**police magistrate.** See MAGISTRATE.

**police officer.** A peace officer responsible for preserving public order, promoting public safety, and preventing and detecting crime. Cf. PEACE OFFICER.

**police power. 1.** The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. • It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government.

"[I]t is possible to evolve at least two main attributes or characteristics which differentiate the police power: it aims directly to secure and promote the public welfare, and it does so by restraint or compulsion." Ernst Freund, *The Police Power* § 3, at 3 (1904).

**2.** A state's Tenth Amendment right, subject to due-process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments. **3.** Loosely, the power of the government to intervene in the use of privately owned property, as by subjecting it to eminent domain. See EMINENT DOMAIN.

**police science.** See CRIMINAL JUSTICE.

**police state.** See STATE (1).

**policy. 1.** The general principles by which a government is guided in its management of public affairs. See PUBLIC POLICY. **2.** A document containing a contract of insurance;

INSURANCE POLICY. **3.** A type of lottery in which bettors select numbers to bet on and place the bet with a "policy writer."

**policyholder.** One who owns an insurance policy, regardless of whether that person is the insured party. — Also termed *policyowner*.

**policy limits.** See LIABILITY LIMIT.

**policy loan.** See LOAN.

**policy of insurance.** See INSURANCE POLICY.

**policy of the law.** See PUBLIC POLICY.

**policyowner.** See POLICYHOLDER.

**policy proof of interest.** *Insurance.* Evidence — shown by possession of a policy — that a person making a claim has an insurable interest in the loss. — Abbr. PPI.

**policy reserve.** See RESERVE.

**policy stacking.** See STACKING.

**policy value.** *Insurance.* The amount of cash available to a policyholder on the surrender or cancellation of the insurance policy.

**policy year.** *Insurance.* The year beginning on the date that a policy becomes effective. Cf. ANNIVERSARY DATE.

**political, adj.** Pertaining to politics; of or relating to the conduct of government.

**political-action committee.** An organization formed by a special-interest group to raise and contribute money to the campaigns of political candidates who the group believes will promote its interests. — Abbr. PAC.

**political assessment.** See ASSESSMENT.

**political asylum.** See ASYLUM (2).

**political corporation.** See *public corporation* (2) under CORPORATION.

**political correctness, n. 1.** The doctrine favoring the elimination of language and practices that might offend political sensibilities, esp. in racial or sexual matters. **2.** An instance in which a person conforms to this doctrine. — Abbr. P.C. — **politically correct, adj.**

**political crime.** See CRIME.

**political economy.** See ECONOMY.

**political gerrymandering.** See GERRYMANDERING (1).

**political law.** See POLITICAL SCIENCE.

**political liberty.** See LIBERTY.

**political offense.** A crime directed against the security or governmental system of a nation, such as treason, sedition, or espionage. • Under principles of international law, the perpetrator of such an offense cannot be extradited.

**political party.** An organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office. • The United States has traditionally maintained a two-party system, which today comprises the Democratic and Republican parties.

**political patronage.** See PATRONAGE (3).

**political power.** The power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politic. — Also termed *civil power*.

**sovereign political power.** Power that is absolute and uncontrolled within its own sphere. • Within its designated limits, its exercise and effective operation do not depend on, and are not subject to, the power of any other person and cannot be prevented or annulled by any other power recognized within the constitutional system. — Often shortened to *sovereign power*. — Also termed *supreme power*.

**subordinate political power.** Power that, within its own sphere of operation, is subject in some degree to external control because there exists some superior constitutional power that can prevent, restrict, direct, or annul its operation. — Often shortened to *subordinate power*.

**political question.** A question that a court will not consider because it involves the exercise of discretionary power by the executive or legislative branch of government. — Also termed *non-justiciable question*. Cf. JUDICIAL QUESTION.

**political-question doctrine.** The judicial principle that a court should refuse to decide an

issue involving the exercise of discretionary power by the executive or legislative branch of government.

**political right.** See RIGHT.

**political science.** The branch of learning concerned with the study of the principles and conduct of government. — Also termed *political law*.

**political society.** See STATE (1).

**political subdivision.** A division of a state that exists primarily to discharge some function of local government.

**political trial.** See TRIAL.

**politics.** 1. The science of the organization and administration of the state. 2. The activity or profession of engaging in political affairs.

**polity (pol-ə-tee).** 1. The total governmental organization as based on its goals and policies. 2. A politically organized body or community.

**polity approach.** A method of resolving church-property disputes by which a court examines the structure of the church to determine whether the church is independent or hierarchical, and then resolves the dispute in accordance with the decision of the proper church-governing body.

**poll, n.** 1. A sampling of opinions on a given topic, conducted randomly or obtained from a specified group. 2. The act or process of voting at an election. 3. The result of the counting of votes. 4. (*usu. pl.*) The place where votes are cast.

**poll, vb.** 1. To ask how each member of (a group) individually voted <after the verdict was read, the judge polled the jury>. 2. To question (people) so as to elicit votes, opinions, or preferences <the committee polled 500 citizens about their views>. 3. To receive (a given number of votes) in an election <the third-party candidate polled only 250 votes in the county>.

**pollicitation.** *Contracts.* The offer of a promise.

"By a *promise* we mean an accepted offer as opposed to an offer of a promise, or, as Austin called it, a *pollicitation*." William R. Anson, *Principles of the Law of Contract* 6 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**poll tax.** See TAX.

**pollute**, *vb.* To corrupt or defile; esp., to contaminate the soil, air, or water with noxious substances. — **pollution**, *n.* — **polluter**, *n.*

**pollution exclusion.** See EXCLUSION (3).

**po. lo. suo.** *abbr.* PONIT LOCO SUO.

**polyandry** (**pol-ee-an-dree**). The condition or practice of having more than one husband. Cf. POLYGyny.

**polyarchy** (**pol-ee-ahr-kee**). Government by many persons. — Also termed *polygarchy* (**pol-ə-gahr-kee**).

**polygamy** (**pə-lig-ə-mee**), *n.* The state of being simultaneously married to more than one spouse; multiple marriages. — **polygamous**, *adj.* — **polygamist**, *n.* Cf. BIGAMY; MONOGAMY.

“Polygamy (many marriages) is employed at times as a synonym of bigamy and at other times to indicate the simultaneous marriage of two or more spouses.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

**polygarchy.** See POLYARCHY.

**polygraph**, *n.* A device used to evaluate veracity by measuring and recording involuntary physiological changes in the human body during interrogation. • Polygraph results are inadmissible as evidence in most states. — Also termed *lie detector*. — **polygraphic**, *adj.* — **polygraphy**, *n.*

**polygyny** (**pə-lij-ə-nee**). The condition or practice of having more than one wife. Cf. POLYANDRY.

**pone** (**poh-nee**). [Latin “put”] *Hist.* An original writ used to remove an action from an inferior court (such as a manorial court or county court) to a superior court. • The writ was so called from the initial words of its mandate, which required the recipient to “put” the matter before the court issuing the writ.

**ponendis in assisis** (**pə-nen-dis in ə-si-zis**). [Latin “to be placed in assizes”] *Hist.* A writ directing the sheriff to empanel a jury for an assize or real action.

**ponendo sigillum ad exceptionem.** See DE PONENDO SIGILLUM AD EXCEPTIONEM.

**ponendum in ballium** (**pə-nen-dəm in bal-ee-əm**). [Latin “to be placed in bail”] *Hist.* A writ

commanding that a prisoner be bailed in a bailable matter.

**pone per vadium** (**poh-nee pər vay-dee-əm**). [Latin] *Hist.* A writ commanding the sheriff to summon a defendant who has failed to appear in response to an initial writ by attaching some of the defendant’s property and requiring the defendant to find sureties. • It was so called from the words of the writ, *pone per vadium et salvos plegios* (“put by gage and safe pledges”).

**ponit loco suo** (**poh-nit loh-ko s[y]oo-oh**). [Latin] Puts in his place. • This phrase was formerly used in a power of attorney. — *Abbr.* *po. lo. suo*.

**ponit se super patriam** (**poh-nit see s[y]oo-pər pay-tree-əm or pa-tree-əm**). [Latin “he puts himself upon the country”] *Hist.* A defendant’s plea of not guilty in a criminal action. — *Abbr.* *po. se*. See GOING TO THE COUNTRY; PATRIA (3).

**pontiff. 1. Roman law.** A member of the council of priests in ancient Rome. — Also termed *pontifex*.

“The specialists who interpreted the Twelve Tables and the unwritten part of the law were called *pontiffs*. At first they dealt with both sacred law (how to appease the gods) and secular law (how to secure peace among men). Some of them later confined themselves to secular law. As an example of how they interpreted the law, the Twelve Tables said that if a father sells his son three times (into bondage, to pay off debts) the son is to be free from his father’s power. The Twelve Tables said nothing about a daughter. The pontiffs held that if a father sold his daughter once, she was free.” Tony Honoré, *About Law* 13 (1995).

**2.** The leader of the Catholic Church; the Pope.

**Ponzi scheme** (**pon-zee**). A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments. • Money from the new investors is used directly to repay or pay interest to old investors, usu. without any operation or revenue-producing activity other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the late 1920s was convicted for fraudulent schemes he conducted in Boston. Cf. PYRAMID SCHEME.

**pool**, *n.* **1.** An association of individuals or entities who share resources and funds to promote their joint undertaking; esp., an association of persons engaged in buying or selling commodi-



ties. ● If such an association is formed to eliminate competition throughout a single industry, it is a restraint of trade that violates federal antitrust laws. **2.** A gambling scheme in which numerous persons contribute stakes for betting on a particular event (such as a sporting event).

**pooling.** See COMMUNITIZATION.

**pooling agreement.** A contractual arrangement by which corporate shareholders agree that their shares will be voted as a unit. — Also termed *voting agreement*; *shareholder voting agreement*; *shareholder-control agreement*.

**pooling of interests.** A method of accounting used in mergers, whereby the acquired company's assets are recorded on the acquiring company's books at their cost when originally acquired. ● No goodwill account is created under the pooling method.

**pop, n.** *Telecommunications.* A calculation of the potential customer base for a mobile-phone-service provider, calculated by the number of people living in the area multiplied by the company's percentage ownership of the area's cellular service.

**Poppean law.** See LEX PAPIA POPPEA.

**popular action.** See QUI TAM ACTION.

**popular election.** See ELECTION.

**popular justice.** See JUSTICE (1).

**populus** (*pop-yə-ləs*). [Latin] *Roman law.* The people; the whole body of Roman citizens, patricians, and plebeians.

**porcupine provision.** A clause in a corporation's charter or bylaws designed to prevent a takeover without the consent of the board of directors. Cf. SHARK REPELLENT; POISON PILL.

**pork-barrel legislation.** See LEGISLATION.

**pornography, n.** Material (such as writings, photographs, or movies) depicting sexual activity or erotic behavior in a way that is designed to arouse sexual excitement. ● Pornography is protected speech under the First Amendment unless it is determined to be legally obscene. — **pornographic, adj.** See OBSCENITY.

**child pornography.** Material depicting a person under the age of 18 engaged in sexual activity. ● Child pornography is not protected

by the First Amendment — even if it falls short of the legal standard for obscenity — and those directly involved in its distribution can be criminally punished.

**port. 1.** A harbor where ships load and unload cargo. **2.** Any place where persons and cargo are allowed to enter a country and where customs officials are stationed. — Also termed (in sense 2) *port of entry*.

**foreign port. 1.** One exclusively within the jurisdiction of another country or state. **2.** A port other than a home port.

**home port.** The port that is either where a vessel is registered or where its owner resides.

**port of call.** A port at which a ship stops during a voyage.

**port of delivery.** The port that is the terminus of any particular voyage and where the ship unloads its cargo.

**port of departure.** The port from which a vessel departs on the start of a voyage.

**port of destination.** The port at which a voyage is to end. ● This term generally includes any stopping places at which the ship receives or unloads cargo.

**port of discharge.** The place where a substantial part of the cargo is discharged.

**portable business.** A law practice that an attorney can take from one firm or geographic location to another, with little loss in client relationships. — Also termed *portable practice*.

**port authority.** A state or federal agency that regulates traffic through a port or that establishes and maintains airports, bridges, tollways, and public transportation.

**portfolio.** The various securities or other investments held by an investor at any given time. ● An investor will often hold several different types of investments in a portfolio for the purpose of diversifying risk.

**market portfolio.** A value-weighted portfolio of every asset in a particular market.

**portfolio income.** See INCOME.

**portio legitima** (*por-shee-oh lə-jit-ə-mə*). [Latin "lawful portion"] *Civil law.* The portion of an inheritance that a given heir is entitled to, and of which the heir cannot be deprived by the testator without special cause.

**portion.** A share or allotted part (as of an estate).

**port of call.** See PORT.

**port of delivery.** See PORT.

**port of departure.** See PORT.

**port of destination.** See PORT.

**port of discharge.** See PORT.

**port of entry.** See PORT.

**portorium** (por-tohr-ee-əm). [Law Latin] *Hist.*

1. A tax or toll levied at a port or at the gates of a city. 2. A toll for passing over a bridge.

**port-risk insurance.** See INSURANCE.

**portsale.** *Hist.* A public sale of goods to the highest bidder; an auction.

**port toll.** A duty paid for bringing goods into a port.

**portwarden.** An official responsible for the administration of a port.

**po. se. abbr.** PONIT SE SUPER PATRIAM.

**position.** The extent of a person's investment in a particular security or market.

**position of the United States.** The legal position of the federal government in a case involving the Equal Access to Justice Act. • The position's reasonableness in light of precedent determines whether the government will be liable for the opposing party's attorney's fees.

**positive act.** See OVERT ACT.

**positive condition.** See CONDITION (2).

**positive covenant.** See COVENANT (1).

**positive duty.** See DUTY (1).

**positive easement.** See *affirmative easement* under EASEMENT.

**positive evidence.** See *direct evidence* (1) under EVIDENCE.

**positive externality.** See EXTERNALITY.

**positive fraud.** See *actual fraud* under FRAUD.

**positive justice.** See JUSTICE (1).

**positive law.** A system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some nonpolitical community. • Positive law typically consists of enacted law — the codes, statutes, and regulations that are applied and enforced in the courts. The term derives from the medieval use of *positum* (Latin "established"), so that the phrase *positive law* literally means law established by human authority. — Also termed *jus positivum*; *made law*. Cf. NATURAL LAW.

"A judge is tethered to the positive law but should not be shackled to it." Patrick Devlin, *The Enforcement of Morals* 94 (1968).

**positive misprision.** See MISPRISION.

**positive notice.** See *direct notice* under NOTICE.

**positive prescription.** See PRESCRIPTION (2).

**positive proof.** See PROOF.

**positive reprisal.** See REPRISAL.

**positive right.** See RIGHT.

**positive servitude.** See SERVITUDE (1).

**positive testimony.** See *affirmative testimony* under TESTIMONY.

**positive wrong.** See WRONG.

**positivi juris** (poz-ə-ti-vi joor-is). [Law Latin] Of positive law. See POSITIVE LAW.

**positivism.** The doctrine that all true knowledge is derived from observable phenomena, rather than speculation or reasoning. See LEGAL POSITIVISM; LOGICAL POSITIVISM; *positivist jurisprudence* under JURISPRUDENCE.

**positivistic, adj.** Of or relating to legal positivism. See LEGAL POSITIVISM.

**positivistic jurisprudence.** See *positivist jurisprudence* under JURISPRUDENCE.

**posse** (pos-ee). [Latin] **1.** A possibility. See IN POSSE. Cf. IN ESSE. **2.** Power; ability.

**posse comitatus** (pos-ee kom-ə-tay-təs), *n.* [Latin "power of the county"] A group of citizens who are called together to assist the sheriff in keeping the peace. — Often shortened to *posse*.

**possess**, *vb.* To have in one's actual control; to have possession of. — **possessor**, *n.*

**possessio** (pə-zes[h]-ee-oh). [Latin] The de facto relation between the holder of a thing and the thing itself.

**pedis possessio** (pee-dis or ped-is pə-zes[h]-ee-oh). [Latin] A foothold; an actual possession of real property, implying either actual occupancy or enclosure or use. See PEDIS POSSESSIO DOCTRINE.

**possessio bona fide** (pə-zes[h]-ee-oh boh-nə fi-dee). [Latin] Possession in good faith. Cf. *possessio mala fide*.

**possessio bonorum** (pə-zes[h]-ee-oh bə-nor-əm). [Latin] *Roman law*. Possession of goods.

**possessio civilis** (pə-zes[h]-ee-oh sə-vi-lis). [Latin] *Roman law*. Legal possession; that is, possession accompanied with an intent to become the owner. • *Possessio civilis* served as the basis for acquiring property by prescription (*usucapio*). Cf. *possessio naturalis*.

**possessio fratris** (pə-zes[h]-ee-oh fray-tris or fra-tris). [Latin] *Hist.* The possession or seisin of a brother; that is, a possession of an estate by a brother that would entitle his full sister to succeed him as heir, to the exclusion of a half-brother.

**possessio mala fide** (pə-zes[h]-ee-oh mal-ə fi-dee). [Latin] Possession in bad faith. Cf. *possessio bona fide*.

**possessio naturalis** (pə-zes[h]-ee-oh nach-ə-ray-lis). [Latin "natural possession"] *Roman law*. The simple holding of a thing, with no intent of keeping it permanently. — Also termed *nuda detentio*. See *natural possession* under POSSESSION. Cf. *possessio civilis*.

**possession**. **1.** The fact of having or holding property in one's power; the exercise of dominion over property. **2.** The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. **3.** (*usu. pl.*) Something that a person owns or controls; PROPERTY (2). **4.** A territorial dominion of a state or nation. Cf. OWNERSHIP; TITLE (1).

"[A]s the name of Possession is . . . one of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent control, or from the use of which he has the apparent power of excluding others. . . . [A]ny of the usual outward marks of ownership may suffice, in the absence of manifest power in some one else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork, and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership, though often concurrent with one or both of them." Frederick Pollock & Robert Samuel Wright, *An Essay on Possession in the Common Law* 1-2 (1888).

"In the whole range of legal theory there is no conception more difficult than that of possession. The Roman lawyers brought their usual acumen to the analysis of it, and since their day the problem has formed the subject of a voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or scientific interest, for its practical importance is not less than its difficulty. The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title." John Salmond, *Jurisprudence* 285 (Glanville L. Williams ed., 10th ed. 1947).

**actual possession.** Physical occupancy or control over property. Cf. *constructive possession*.

**adverse possession.** See ADVERSE POSSESSION.

**bona fide possession.** Possession of property by a person who in good faith does not know that the property's ownership is disputed.

**civil possession.** *Civil law*. Possession existing by virtue of a person's intent to own a property even though the person no longer occupies or has physical control of it.

**constructive possession.** Control or dominion over a property without actual possession or custody of it. — Also termed *effective possession*; *possessio fictitia*. Cf. *actual possession*.

**corporeal possession.** Possession of a material object, such as a farm or a coin. — Also termed *natural possession*; *possessio corporis*; (Ger.) *Sachenbesitz*.

**derivative possession.** Lawful possession by one (such as a tenant) who does not hold title.

**direct possession.** See *immediate possession*.

**effective possession.** See *constructive possession*.

**exclusive possession.** The exercise of exclusive dominion over property, including the use and benefit of the property.

**hostile possession.** Possession asserted against the claims of all others, including the record owner. See ADVERSE POSSESSION.

**immediate possession.** Possession that is acquired or retained directly or personally. — Also termed *direct possession*.

**incorporeal possession.** Possession of something other than a material object, such as an easement over a neighbor's land, or the access of light to the windows of a house. — Also termed *possessio juris*; *quasi-possession*.

"It is a question much debated whether incorporeal possession is in reality true possession at all. Some are of opinion that all genuine possession is corporeal, and that the other is related to it by way of analogy merely. They maintain that there is no single generic conception which includes *possessio corporis* and *possessio juris* as its two specific forms. The Roman lawyers speak with hesitation and even inconsistency on the point. They sometimes include both forms under the title of *possessio*, while at other times they are careful to qualify incorporeal possession as *quasi possessio* — something which is not true possession, but is analogous to it. The question is one of no little difficulty, but the opinion here accepted is that the two forms do in truth belong to a single genus. The true idea of possession is wider than that of corporeal possession, just as the true idea of ownership is wider than that of corporeal ownership." John Salmond, *Jurisprudence* 288-89 (Glanville L. Williams ed., 10th ed. 1947).

**indirect possession.** See *mediate possession*.

**insular possession.** An island territory of the United States, such as Puerto Rico.

**mediate possession** (mee-dee-it). Possession of a thing through someone else, such as an agent. • In every instance of mediate possession, there is a direct possessor (such as an agent) as well as a mediate possessor (the principal). — Also termed *indirect possession*.

"If I go myself to purchase a book, I acquire direct possession of it; but if I send my servant to buy it for me, I acquire mediate possession of it through him, until he has brought it to me, when my possession becomes immediate." John Salmond, *Jurisprudence* 300 (Glanville L. Williams ed., 10th ed. 1947).

**naked possession.** The mere possession of something, esp. real estate, without any apparent right or colorable title to it.

**natural possession.** *Civil law.* The exercise of physical detention or control over a thing, as by occupying a building or cultivating farmland. • Natural possession may be had without title, and may give rise to a claim of unlawful possession or a claim of ownership

by acquisitive prescription. The term "natural possession" has been replaced by the term "corporeal possession" in the Louisiana Civil Code, by virtue of a 1982 revision. The change was nonsubstantive. La. Civ. Code Ann. art. 3425 (West 1994). See *corporeal possession*; PRESCRIPTION (2).

**notorious possession.** Possession or control that is evident to others; possession of property that, because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it. • Notorious possession is one element of adverse possession. — Also termed *open possession*; *open and notorious possession*. See ADVERSE POSSESSION.

**peaceable possession.** Possession (as of real property) not disturbed by another's hostile or legal attempts to recover possession. Cf. ADVERSE POSSESSION.

**pedal possession.** Actual possession, as by living on the land or by improving it. • This term usu. appears in adverse-possession contexts.

**possession in fact.** Actual possession that may or may not be recognized by law. • For example, an employee's possession of an employer's property is for some purposes not legally considered possession, the term *detention* or *custody* being used instead. — Also termed *possessio naturalis*.

**possession in law.** 1. Possession that is recognized by the law either because it is a specific type of possession in fact or because the law for some special reason attributes the advantages and results of possession to someone who does not in fact possess. 2. See *constructive possession*. — Also termed *possessio civilis*.

"There is no conception which will include all that amounts to possession in law, and will include nothing else, and it is impossible to frame any definition from which the concrete law of possession can be logically deduced." John Salmond, *Jurisprudence* 287 (Glanville L. Williams ed., 10th ed. 1947).

**possession of a right.** The de facto relation of continuing exercise and enjoyment of a right, as opposed to the de jure relation of ownership. — Also termed *possessio juris*; (Ger.) *Rechtsbesitz*.

**precarious possession.** *Civil law.* Possession of property by someone other than the owner on behalf of or with permission of the owner. • A lessee may have precarious possession of the leased property.

**quasi possession.** See *incorporeal possession*.

**scrambling possession.** Possession that is uncertain because it is in dispute. • With scrambling possession, the dispute is over who actually has possession — not over whether a party's possession is lawful.

**possession unity.** See *unity of possession* under UNITY.

**possessor.** One who has possession. — **possessorial** (pos-ə-sor-ee-əl), *adj.*

**possessor bona fide** (boh-nə fi-dee). A possessor who believes that no other person has a better right to the possession.

**possessor mala fide** (mal-ə fi-dee). A possessor who knows that someone else has a better right to the possession.

**possessorium** (pos-ə-sor-ee-əm). See *possessory action* under ACTION.

**possessory** (pə-zes-ə-ree), *adj.* Of, relating to, or having possession.

**possessory action.** See ACTION.

**possessory claim.** The title of a claimant to public land who has filed a declaratory statement but has not paid for the land.

**possessory conservator.** See CONSERVATOR.

**possessory garageman's lien.** See LIEN.

**possessory interest.** 1. The present right to control property, including the right to exclude others, by a person who is not necessarily the owner. 2. A present or future right to the exclusive use and possession of property.

"We shall use the term 'possessory interest' to include both present and future interests, and to exclude such interests as easements and profits. The reader should note that the Restatement of Property uses the term 'possessory' to refer only to interests that entitle the owner to *present* possession. See Restatement, Property §§ 7, 9, 153 (1936)." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 19–20 n.1 (2d ed. 1984).

**possessory lien.** See LIEN.

**possessory warrant.** A process similar to a search warrant used by a civil plaintiff to search for and recover property wrongfully taken.

**possibilitas** (pos-ə-bil-ə-tas). [Latin] Possibility; a possibility.

**possibility.** 1. An event that may or may not happen. 2. A contingent interest in real or personal property.

**naked possibility.** A mere chance or expectation that a person will acquire future property. • A conveyance of a naked possibility is usu. void for lack of subject matter, as in a deed conveying all rights to a future estate not yet in existence. — Also termed *bare possibility*; *naked expectancy*.

**possibility coupled with an interest.** An expectation recognized in law as an estate or interest, as occurs in an executory devise or in a shifting or springing use. • This type of possibility may be sold or assigned.

**remote possibility.** A limitation dependent on two or more facts or events that are contingent and uncertain; a double possibility. — Also termed *possibility on a possibility*.

**possibility of reverter.** A future interest retained by a grantor after conveying a fee simple determinable, so that the grantee's estate terminates automatically and reverts to the grantor if the terminating event ever occurs. • In this type of interest, the grantor transfers an estate whose maximum potential duration equals that of the grantor's own estate and attaches a special limitation that operates in the grantor's favor. — Often shortened to *reverter*. See *fee simple determinable* under FEE SIMPLE. Cf. POWER OF TERMINATION.

"Most treatise-writers define the possibility of reverter as the interest a transferor keeps when he transfers a fee simple determinable or a fee simple conditional. See, e.g., 1 American Law of Property § 4.12; Simes & Smith § 281. Although this definition is all right as far as it goes, it fails to provide for interests less than the fee simple that are granted on special limitation... Although we call the possibility of reverter an 'estate,' the courts of an earlier era would probably have called it a 'possibility of becoming an estate.'" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 58 n.5 (2d ed. 1984).

**possibility on a possibility.** See *remote possibility* under POSSIBILITY.

**POSSLQ** (pahs-əl-kyoo). *abbr.* A person of opposite sex sharing living quarters. • Although this term is intended to include only a person's roommate of the opposite sex to whom the person is not married, the phrase literally includes those who are married. This overbreadth has occasionally been criticized. See CUPOS.

"In the 1980 census, the United States Census Bureau — recognizing a societal change with numerous persons living together without being 'officially' married — counted not only persons who were 'Single' and

'Married,' but also 'Persons of the Opposite Sex Sharing Living Quarters.' The acronym is *POSSLQ* — and, of course, is pronounced *possle-kew*. It has been suggested that, although the source was stunningly unlikely, it was the Very Word that society has been looking for to describe these relationships: *POSSLQ*. Precise, business-like, nonjudgmental. And, in its own way, sort of poetic, too . . . ." *Fischer v. Dallas Federal Savings and Loan Ass'n*, 106 F.R.D. 465 (N.D. Tex. 1985).

**post.** [Latin] After. Cf. ANTE.

**post, vb.** **1.** To publicize or announce by affixing a notice in a public place <foreclosure notice was posted at the county courthouse>. **2.** To transfer (accounting entries) from an original record to a ledger <post debits and credits>. **3.** To place in the mail <post a letter>. **4.** To make a payment or deposit; to put up <post bail>.

**postal currency.** See CURRENCY.

**post-answer default judgment.** See DEFAULT JUDGMENT.

**post audit.** See AUDIT.

**post bail, vb.** See GIVE BAIL.

**postconviction-relief proceeding.** A state or federal procedure for a prisoner to request a court to vacate or correct a conviction or sentence. — Also termed *postconviction-remedy proceeding*; *PCR action*; *postconviction proceeding*.

**postdate, vb.** To put a date on (an instrument, such as a check) that is later than the actual date. Cf. ANTEDATE; BACKDATE.

**postdated check.** See CHECK.

**post diem** (pohst dī-əm). [Latin] After the day. ● A plea of payment *post diem* is made after the day when the money becomes due.

**post disseisina.** See DE POST DISSEISINA.

**postea** (poh-stee-ə), *n.* [Latin "afterwards"] *Hist.* A formal statement, endorsed on a *nisi prius* record, giving an account of the proceedings at the trial of the action.

"With the verdict of the jury [in the 15th–18th centuries] . . . the proceedings at *nisi prius* closed, and the case was sent back to the court at Westminster from which it issued for judgment, after a statement of the holding of the trial and of the verdict had been added to the record. This statement, from the fact that it began

with the Latin word 'postea,' or 'afterwards,' was known as the 'postea' and was in fact drafted by the party in whose favour the verdict had gone, whence the phrase 'postea to the plaintiff' or 'the defendant,' which is found in the old reports." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 185 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

**posted water.** See WATER.

**posteriores** (pah-steer-ee-or-eez). [Latin] *Roman law.* Descendants in a direct line beyond the sixth degree.

**posteriority** (pah-steer-ee-or-ə-tee). The condition or state of being subsequent. ● This word was formerly used to describe the relationships existing between a tenant and the two or more lords the tenant held of; the tenant held the older tenancy "by priority" and the more recent one "by posteriority."

**posterity, n.** **1.** Future generations collectively. **2.** All the descendants of a person to the furthest generation.

**post facto** (pohst fak-toh). [Latin] After the fact. See EX POST FACTO.

**post-factum** (pohst-fak-təm). [Latin] An after-act; an act done afterwards. — Also termed *postfactum*.

**post-fine.** See KING'S SILVER.

**postglossators** (pohst-glah-say-tərz). (*often cap.*) A group of Italian jurisconsults who were active during the 14th and 15th centuries writing commentaries and treatises that related Roman law to feudal and Germanic law, canon law, and other contemporary bodies of law. ● The postglossators constituted the second wave of Roman-law study after its revival in the 11th century, the first being that of the glossators. — Also termed *commentators*. See GLOSSATORS.

**post hoc** (pohst hok). [Latin fr. *post hoc, ergo propter hoc* "after this, therefore because of this"] **1. adv.** After this; consequently. **2. adj.** Of or relating to the fallacy of assuming causality from temporal sequence; confusing sequence with consequence.

**posthumous** (pos-chə-məs), *adj.* Occurring or existing after death; esp., (of a child) born after the father's death.

**posthumous child.** See CHILD.

**posthumous work.** *Copyright.* The product of an author who died before publication.

**posting.** **1.** *Accounting.* The act of transferring an original entry to a ledger. **2.** The act of mailing a letter. **3.** A method of substituted service of process by displaying the process in a prominent place (such as the courthouse door) when other forms of service have failed. See SERVICE (1). **4.** A publication method, as by displaying municipal ordinances in designated localities. **5.** The act of providing legal notice, as by affixing notices of judicial sales at or on the courthouse door. **6.** The procedure for processing a check, including one or more of the following steps: (1) verifying any signature, (2) ascertaining that sufficient funds are available, (3) affixing a "paid" or other stamp, (4) entering a charge or entry to a customer's account, and (5) correcting or reversing an entry or erroneous action concerning the check.

**postjudgment discovery.** See DISCOVERY.

**postliminium** (pohst-lə-min-ee-əm), *n.* [fr. Lat. in *post* "after" + *limen* "threshold"] **1.** *Roman & civil law.* The doctrine that a restoration of a person's lost rights or status relates back to the time of the original loss or deprivation, esp. in regard to the restoration of the status of a prisoner of war.

"[A] person who is taken captive and comes back within the limits of the Empire is correctly described as returning by postliminium. By 'limen' (threshold) we mean the frontier of a house, and the old lawyers applied the word to the frontier of the Roman State; so that the word postliminium conveys the idea of recrossing the frontier. If a prisoner is recovered from a beaten foe he is deemed to have come back by postliminium." R.W. Lee, *The Elements of Roman Law* 85-86 (4th ed. 1956).

**2.** *Int'l law.* The act of invalidating all an occupying force's illegal acts, and the post-occupation revival of all illegitimately modified legal relations to their former condition, esp. the restoration of property to its rightful owner. — Also termed *postliminy*.

**post litem motam** (pohst lī-təm moh-təm). [Law Latin] After suit commenced. • Depositions held after litigation had begun were formerly sometimes so called.

**postman.** *Hist.* A barrister in the Court of Exchequer who had precedence in motions. • The postman was so called because of the post he stood next to when making motions.

**postmark.** An official mark put by the post office on an item of mail to cancel the stamp

and to indicate the place and date of sending or receipt.

**postmaster.** A U.S. Postal Service official responsible for a local branch of the post office. — Abbr. PM.

**Postmaster General.** The head of the U.S. Postal Service.

**post meridiem** (pohst mə-rid-ee-əm). [Latin] After noon. — Abbr. p.m.; PM.

**postmortem,** *adj.* Done or occurring after death <a postmortem examination>.

**postmortem,** *n.* See AUTOPSY.

**post natus** (pohst nay-təs). [Latin] A person born after a certain political event that affected the person's political rights; esp., a person born after the Declaration of Independence. Cf. ANTE NATUS.

**post-note.** A banknote payable at a future time rather than on demand.

**postnuptial** (pohst-nəp-shəl), *adj.* Made or occurring after marriage <a postnuptial contract>.

**postnuptial agreement** (pohst-nəp-shəl). An agreement entered into after marriage defining each spouse's property rights in the event of death or divorce. — Also termed *postnuptial settlement*. Cf. PRENUPTIAL AGREEMENT.

**post-obit bond.** See BOND (3).

**postpone,** *vb.* **1.** To put off to a later time. **2.** To place lower in precedence or importance; esp., to subordinate (a lien) to a later one. — **postponement,** *n.*

**post prolem suscitatum** (pohst proh-ləm səs-ə-tay-təm). [Law Latin] After issue born.

**post-terminal sitting.** A court session held after the normal term.

**post terminum** (pohst tər-mə-nəm). [Law Latin] After term, as a writ returned after the ending of a judicial term.

**posttrial discovery.** See *postjudgment discovery* under DISCOVERY.

**posttrial motion.** See MOTION.

**postulatio** (pos-chə-lay-shee-oh). [Latin] *Hist. Eccles. law.* A petition requesting the transfer of a bishop.

**postulatio actionis** (pos-chə-lay-shee-oh ak-shee-oh-nis). [Latin] *Roman law.* A request or petition to a magistrate having jurisdiction for permission to bring an action to redress a wrong. • This was similar to the former practice of applying for a writ.

**potentate** (poh-tən-tayt). A ruler who possesses great power or sway; a monarch.

**potentia** (pə-ten-shee-ə). [Latin] Possibility; power.

**potential, adj.** Capable of coming into being; possible <things having a potential existence may be the subject of mortgage, assignment, or sale>.

**potential Pareto superiority.** See WEALTH MAXIMIZATION.

**potentia propinqua** (pə-ten-shee-ə prə-ping-kwə). [Latin] Common possibility.

**potestas** (pə-tes-təs). [Latin “power”] *Roman law.* Authority or power, such as the power of a magistrate to enforce the law, or the authority of a master over a slave.

**patria potestas** (pay-tree-ə or pa-tree-ə pə-tes-təs). [Latin “paternal power”] The authority held by the male head of a family over his children and further descendants in the male line, unless emancipated. • Initially, the father had extensive powers over the family, including the power of life and death. Over time, the broad nature of the *patria potestas* gradually became more in the nature of a responsibility to support and maintain family members.

“The power of the father continued ordinarily to the close of his life, and included not only his own children, but also the children of his sons, and those of his sons’ sons, if any such were born during his lifetime.... Originally and for a long time the *patria potestas* had a terribly despotic character. Not only was the father entitled to all the service and all the acquisitions of his child, as much as to those of a slave, but he had the same absolute control over his person. He could inflict upon him any punishment however severe.... Consider now that the *patria potestas* had this character and extent down to the Christian era: that, in general, every citizen of the republic who had a living father was in this condition, unable to hold property, unable to acquire any

thing for himself, wholly dependent on his father in property and person ... without help or vindication from the law.... The reason which caused the Romans to accept and uphold the *patria potestas*, to maintain it with singular tenacity against the influence of other systems with which they came in contact, must have been the profound impression of family unity, the conviction that every family was, and of right ought to be, one body, with one will and one executive.” James Hadley, *Introduction to Roman Law* 119–21 (1881).

**potestative condition.** See CONDITION (2).

**pound, n.** **1.** A place where impounded property is held until redeemed. **2.** A place for the detention of stray animals. **3.** A measure of weight equal to 16 avoirdupois ounces or 7,000 grains. **4.** The basic monetary unit of the United Kingdom, equal to 100 pence. — Also termed (in sense 4) *pound sterling*.

**poundage fee.** A percentage commission awarded to a sheriff for moneys recovered under judicial process, such as execution or attachment.

**pound-breach. Hist.** The offense of breaking a pound for the purpose of taking out something that has been impounded.

**pound of land.** An uncertain quantity of land, usu. thought to be about 52 acres.

**pound sterling.** See POUND.

**pour acquit** (poor a-kee), *n.* [French “for acquittance”] *French law.* The formula that a creditor adds when signing a receipt.

**pour appuyer** (poor a-poo-yay). [Law French] For the support of; in the support of.

**pour autrui** (poor oh-troo-ee). [Law French] For others.

**pour faire proclamer** (poor fair prə-klay-mər), *n.* [Law French “for making a proclamation”] *Hist.* A writ addressed to the mayor or bailiff of a city or town, requiring that official to make a proclamation about some matter, such as a nuisance.

**pour out, vb. Slang.** To deny (a claimant) damages or relief in a lawsuit <the plaintiff was poured out of court by the jury’s verdict of no liability>.

**poulover trust.** See TRUST.



**pourover will.** See WILL.

**pourparty** (poor-pahr-tee). [Law French] See PURPARTY.

**pourpresture** (poor-pres-chər). [Law French] See PURPRESTURE.

**pour seisir terres** (poor si-zər ter-eez). [Law French “for seizing the lands”] *Hist.* A writ by which the Crown could seize land that the wife of its deceased tenant, who held *in capite*, had for her dower if she married without leave.

**poverty.** **1.** The condition of being indigent; the scarcity of the means of subsistence <war on poverty>. **2.** Dearth of something desirable <a poverty of ideas>.

**poverty affidavit.** See AFFIDAVIT.

**Powell doctrine.** See CORRUPT-MOTIVE DOCTRINE.

**power.** **1.** The ability to act or not act. **2.** Dominance, control, or influence over another. **3.** The legal right or authorization to act or not act; the ability conferred on a person by the law to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another. **4.** A document granting legal authorization. See AUTHORITY. **5.** An authority to affect an estate in land by (1) creating some estate independently of any estate that the holder of the authority possesses, (2) imposing a charge on the estate, or (3) revoking an existing estate. See POWER OF APPOINTMENT.

**appendant power** (ə-pen-dənt). **1.** A power that gives the donee a right to appoint estates that attach to the donee’s own interest. **2.** A power held by a donee who owns the property interest in the assets subject to the power, and whose interest can be divested by the exercise of the power. ● The power appendant is generally viewed as adding nothing to the ownership and thus is not now generally recognized as a true power. — Also termed *power appendant*.

**beneficial power.** A power that is executed for the benefit of the power’s donee, as distinguished from a *trust power*, which is executed for the benefit of someone other than the power’s donee (i.e., a trust beneficiary).

**collateral power.** A power created when the donee has no estate in the land, but simply the authority to appoint.

**concurrent power.** A political power independently exercisable by both federal and state governments in the same field of legislation.

**congressional power.** The authority vested in the U.S. Senate and House of Representatives to enact laws and take other constitutionally permitted actions. U.S. Const. art. I.

**enumerated power.** A political power specifically delegated to a governmental branch by a constitution. — Also termed *express power*.

**general power.** Power that can be exercised in anyone’s favor, including the agent, to affect another’s interest in property; a power that authorizes the alienation of a fee to any alienee.

**implied power.** A political power that is not enumerated but that nonetheless exists because it is needed to carry out an express power.

**incident power.** A power that, although not expressly granted, must exist because it is necessary to the accomplishment of an express purpose. — Also termed *incidental power*.

**inherent power.** A power that necessarily derives from an office, position, or status.

**institorial power** (in-stə-tor-ee-əl). *Civil law.* The power given by a business owner to an agent to act in the owner’s behalf.

**investigatory power** (in-ves-tə-gə-tor-ee). (*usu. pl.*) The authority conferred on a governmental agency to inspect and compel disclosure of facts germane to an investigation.

**judicial power.** See JUDICIAL POWER.

**naked power.** The power to exercise rights over something (such as a trust) without having a corresponding interest in that thing. Cf. *power coupled with an interest*.

**plenary power** (plee-nə-ree or plen-ə-ree). Power that is broadly construed; esp., a court’s power to dispose of any matter properly before it.

**police power.** See POLICE POWER.

**power appendant.** See *appendant power*.

**power coupled with an interest.** A power to do some act, conveyed along with an interest in the subject matter of the power. ● A power coupled with an interest is not held for the benefit of the principal, and it is irrevocable due to the agent’s interest in the subject property. For this reason, some authorities assert that it is not a true agency power. — Also termed *power given as security*; *proprietary power*. Cf. *naked power*.

"[S]uppose that the principal borrows money from the agent and by way of security authorizes the agent to sell Blackacre if the loan is not repaid and pay himself out of the proceeds. In such case there is no more reason why the principal should be permitted to revoke than if he had formally conveyed or mortgaged Blackacre to the agent. Hence it would be highly unfair to the agent to allow his principal to revoke. The reason why such a case is not properly governed by the considerations usually making an agency revocable is that this is in reality not a case of agency at all. In a normal agency case the power is conferred upon the agent to enable him to do something for the principal while here it is given to him to enable him to do something for himself. Coupled with an interest means that the agent must have a present interest in the property upon which the power is to operate." Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 47, at 99 (1990).

**power in gross.** A power held by a donee who has an interest in the assets subject to the power but whose interest cannot be affected by the exercise of the power. • An example is a life tenant with a power over the remainder.

**power of acceptance.** An offeree's power to bind an offeror to a contract by accepting the offer.

**power of revocation** (rev-ə-kay-shən). A power that a person reserves in an instrument (such as a trust) to revoke the legal relationship that the person has created.

**power of sale.** A power granted to sell the property that the power relates to.

**power over oneself.** See CAPACITY (2).

**power over other persons.** See AUTHORITY (1).

**private power.** A power vested in a person to be exercised for personal ends and not as an agent for the state.

**proprietary power.** See *power coupled with an interest*.

**public power.** A power vested in a person as an agent or instrument of the functions of the state. • Public powers comprise the various forms of legislative, judicial, and executive authority.

**quasi-judicial power.** An administrative agency's power to adjudicate the rights of those who appear before it.

**quasi-legislative power.** An administrative agency's power to engage in rulemaking. 5 USCA § 553.

**relative power.** A power that relates directly to land, as distinguished from a collateral power.

**reserved power.** A political power that is not enumerated or prohibited by a constitution,

but instead is reserved by the constitution for a specified political authority, such as a state government. See TENTH AMENDMENT.

**resulting power.** A political power derived from the aggregate powers expressly or impliedly granted by a constitution.

**special power. 1.** A power that either does not allow the entire estate to be conveyed or restricts to whom the estate may be conveyed. **2.** An agent's limited authority to perform only specific acts or to perform under specific restrictions.

**spending power.** The power granted to a governmental body to spend public funds; esp., the congressional power to spend money for the payment of debt and provision of the common defense and general welfare of the United States. U.S. Const. art. I, § 8, cl. 1.

**taxing power.** The power granted to a governmental body to levy a tax; esp., the congressional power to levy and collect taxes as a means of effectuating Congress's delegated powers. U.S. Const. art. I, § 8, cl. 1. See SIXTEENTH AMENDMENT.

**power appendant.** See POWER.

**power coupled with an interest.** See POWER.

**power-delegating law.** See LAW OF COMPETENCE.

**power given as security.** See *power coupled with an interest* under POWER.

**power in gross.** See POWER.

**power of acceptance.** See POWER.

**power of alienation.** The capacity to sell, transfer, assign, or otherwise dispose of property.

**power of appointment.** A power conferred on a donee by will or deed to select and nominate one or more recipients of the donor's estate or income. — Also termed *enabling power*.

**general power of appointment.** A power of appointment by which the donee can appoint — that is, dispose of the donor's property — in favor of anyone the donee chooses.

**limited power of appointment.** A power of appointment by which the donee can appoint to only the person or class specified in the instrument creating the power. — Also termed *special power of appointment*.

**testamentary power of appointment** (tes-tə-men-tə-ree or -tree). A power of appointment created by a will.

**power-of-appointment trust.** See TRUST.

**power of attorney.** **1.** An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. — Also termed *letter of attorney*. **2.** The authority so granted. Pl. **powers of attorney.** See ATTORNEY (1).

**durable power of attorney.** A power of attorney that remains in effect during the grantor's incompetency. • Such instruments commonly allow an agent to make healthcare decisions for a patient who has become incompetent.

**general power of attorney.** A power of attorney that authorizes an agent to transact business for the principal.

**irrevocable power of attorney** (i-rev-ə-kə-bəl). A power of attorney that the principal cannot revoke. — Also termed *power of attorney coupled with an interest*. See *power coupled with an interest* under POWER.

**power of attorney coupled with an interest.** See *irrevocable power of attorney*.

**special power of attorney.** A power of attorney that limits the agent's authority to only a specified matter.

**power of revocation** (rev-ə-kay-shən). See POWER.

**power of sale.** See POWER.

**power-of-sale clause.** A provision in a mortgage or deed of trust permitting the mortgagee or trustee to sell the property without court authority if the payments are not made.

**power-of-sale foreclosure.** See FORECLOSURE.

**power of termination.** A future interest retained by a grantor after conveying a fee simple subject to a condition subsequent, so that the grantee's estate terminates (upon breach of the condition) only if the grantor exercises the right to retake it. — Also termed *right of entry*; *right of reentry*; *right of entry for breach of condition*; *right of entry for condition broken*. See *fee simple subject to a condition subsequent* under FEE SIMPLE. Cf. POSSIBILITY OF REVERTER.

**power over oneself.** See CAPACITY (2).

**power over other persons.** See AUTHORITY (1).

**power politics.** *Int'l law.* An approach to foreign policy that encourages a nation to use its economic and military strength to enlarge its own power as an end in itself; a system in which a country is willing to bring its economic and (esp.) military strength to bear in an effort to increase its own power.

**p.p. abbr.** **1.** PER PROCURATIONEM. **2.** PROPRIA PERSONA.

**PPI. abbr.** POLICY PROOF OF INTEREST.

**PPO. abbr.** PREFERRED-PROVIDER ORGANIZATION.

**p. pro. abbr.** PER PROCURATIONEM.

**p. proc. abbr.** PER PROCURATIONEM.

**PR. abbr.** PUBLIC RELATIONS.

**practicable, adj.** (Of a thing) reasonably capable of being accomplished; feasible.

**practicably irrigable acreage.** Land that is susceptible to prolonged irrigation, at reasonable cost.

**practice, n.** **1.** The procedural methods and rules used in a court of law <local practice requires that an extra copy of each motion be filed with the clerk>. **2.** PRACTICE OF LAW <where is your practice?>.

**practice act.** A statute governing practice and procedure in courts. • Practice acts are usu. supplemented with court rules such as the Federal Rules of Civil Procedure.

**practice book.** A volume devoted to the procedures in a particular court or category of courts, usu. including court rules, court forms, and practice directions.

**practice court.** **1.** MOOT COURT. **2.** (*cap.*) BAIL COURT.

**practice of law.** The professional work of a duly licensed lawyer, encompassing a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate-planning documents, and advising clients on countless types of legal questions. • The term also includes activities that comparatively few lawyers engage in but that

require legal expertise, such as drafting legislation and court rules. — Also termed *legal practice*. Cf. LAW PRACTICE.

**unauthorized practice of law.** The practice of law by a person, typically a nonlawyer, who has not been licensed or admitted to practice law in a given jurisdiction. — Abbr. UPL.

“The definitions and tests employed by courts to delineate unauthorized practice by non-lawyers have been vague or conclusory, while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas.

“Certain activities, such as the representation of another person in litigation, are generally proscribed. Even in that area, many jurisdictions recognize exceptions for such matters as small-claims and landlord-tenant tribunals and certain proceedings in administrative agencies. Moreover, many jurisdictions have authorized law students and others not locally admitted to represent indigent persons or others as part of clinical legal education programs.

“Controversy has surrounded many out-of-court activities such as advising on estate planning by bank trust officers, advising on estate planning by insurance agents, stock brokers, or benefit-plan and similar consultants, filling out or providing guidance on forms for property transactions by real estate agents, title companies, and closing-service companies, and selling books or individual forms containing instructions on self-help legal services accompanied by personal, non-lawyer assistance on filling them out in connection with legal procedures such as obtaining a marriage dissolution. The position of bar associations has traditionally been that non-lawyer provisions of such services denies the person served the benefit of such legal measures as the attorney-client privilege, the benefits of such extraordinary duties as that of confidentiality of client information and the protection against conflicts of interest, and the protection of such measures as those regulating lawyer trust accounts and requiring lawyers to supervise non-lawyer personnel. Several jurisdictions recognize that many such services can be provided by non-lawyers without significant risk of incompetent service, that actual experience in several states with extensive non-lawyer provision of traditional legal services indicates no significant risk of harm to consumers of such services, that persons in need of legal services may be significantly aided in obtaining assistance at a much lower price than would be entailed by segregating out a portion of a transaction to be handled by a lawyer for a fee, and that many persons can ill afford, and most persons are at least inconvenienced by, the typically higher cost of lawyer services.” Restatement (Third) of the Law Governing Lawyers § 4 cmt. c (1998).

**practick (prak-tik).** *Scots law*. A precedent that is not necessarily binding.

**practitioner.** A person engaged in the practice of a profession, esp. law or medicine.

**praeceptores** (pree-sep-tor-eez). [Law Latin “masters”] *Hist.* The chief clerks of Chancery, responsible for preparing remedial writs.

**praecipe** (pree-sə-pee or pres-ə-pee), *n.* [Latin “command”] **1.** At common law, a writ ordering a defendant to do some act or to explain why inaction is appropriate. — Also termed *writ of praecipe*. **2.** A written motion or request seeking some court action, esp. a trial setting or an entry of judgment. — Also spelled *precipe*. — **praecipe, vb.**

**praecipe quod reddat** (pree-sə-pee or pres-ə-pee kwod red-at). [Latin “command that he render”] *Hist.* A writ directing the defendant to return certain property. ● An action for common recovery was often begun with this writ. When the writ was brought to recover land, it was termed *ingressu*. See COMMON RECOVERY.

“The *praecipe quod reddat* was the proper writ when the plaintiff’s action was for a specific thing; as for the recovery of a debt certain, or for the restoration of such a chattel, or for giving up such a house, or so much land, specifying the nature and quantity of it. By this writ the sheriff was commanded to summon the tenant or defendant to appear at *Westminster*, at such a day in term.” 1 George Crompton, *Rules and Cases of Practice in the Courts of King’s Bench and Common Pleas* xxxix (3d ed. 1787).

**praecipitium** (pree-sə-pish-ee-əm or pres-ə-). [Latin] *Roman law*. The punishment of casting a criminal from the Tarpeian rock.

**praeco** (pree-koh). [Latin] *Roman law*. A herald or crier.

**praedia** (pree-dee-ə), *n.* [Latin] *pl.* PRAEDIUM.

**praedial** (pree-dee-əl), *adj.* See PREDIAL.

**praedictus** (pri-dik-təs). [Law Latin] *Hist.* Aforesaid. ● In pleading, *praedictus* usu. referred to a defendant, a town, or lands, *idem* to a plaintiff, and *praefatus* to a person other than a party. Cf. PRAEFATUS.

**praedium** (pree-dee-əm), *n.* [Latin] *Roman law*. Land; an estate. *Pl.* **praedia**.

**praedia bellica** (pree-dee-ə bel-ə-kə). [Latin] Property seized in war; booty.

**praedia stipendiaria** (pree-dee-ə sti-pen-dee-air-ee-ə). [Latin] Provincial lands belonging to the public.

**praedia tributaria** (pree-dee-ə trib-yoo-tair-ee-ə). [Latin] Provincial lands belonging to the emperor.

**praedium dominans** (pree-dee-əm dom-ə-nanz). [Latin] A dominant estate.

**praedium rusticum** (pree-dee-əm rəs-ti-kəm). [Latin] An estate used for agricultural purposes.

**praedium serviens** (pree-dee-əm sər-vee-enz). [Latin] An estate burdened by a servitude; a servient estate.

**praedium urbanum** (pree-dee-əm ər-bay-nəm). [Latin] An estate used for business or for dwelling; any estate other than a *praedium rusticum*.

**praedo** (pree-doh), *n.* [Latin] *Roman law*. A robber.

**praefatus** (pri-fay-təs). [Latin] Aforesaid. — Abbr. *praefat*; *p. fat.* Cf. PRAEDICTUS.

**praefectura** (pri-fek-chər-ə), *n.* [Latin] *Roman law*. **1.** The office of prefect. **2.** A town or territory administered by a prefect.

**praefectus vigilium** (pri-fek-təs vi-jil-ee-əm), *n.* [Latin “prefect of the watch”] *Roman law*. An officer with police and fire-prevention duties. • This officer had the authority to punish offenses relating to the public peace.

**praefectus villae** (pri-fek-təs vil-ee), *n.* [Latin] *Hist.* The mayor of a town.

**praefine.** See PRIMER FINE.

**praejuramentum** (pree-juur-ə-men-təm), *n.* [Law Latin] *Hist.* A preparatory oath.

**praelegatum** (pree-lə-gay-təm), *n.* [Latin] *Roman law*. A legacy given in advance of the whole or part of the share that a given heir would be entitled to receive out of an inheritance. • This was similar to an advancement.

**praemium emancipationis** (pree-mee-əm i-man-sə-pay-shee-oh-nis), *n.* [Latin “reward for emancipation”] *Roman law*. A compensation allowed by Constantine to a father on the emancipation of his child, consisting of one-third of the property that came to the child from his mother’s side. • Justinian replaced this with the usufruct of half the child’s separate property.

**praemium pudicitiae** (pree-mee-əm pyoo-də-sish-ee-ee), *n.* [Latin “the price of chastity”] *Hist.* Compensation paid by a man who seduced

a chaste woman. — Also termed *praemium pudoris*.

**praemunire** (pree-myoo-ni-ree), *n.* [Latin *praemoneri* “to be forewarned”] *Hist.* The criminal offense of obeying an authority other than the king. • *Praemunire* stems from the efforts of Edward I (1272–1307) to counter papal influence in England, and takes its name from the writ’s initial words: *praemunire facias* (“that you cause to be forewarned”). *Praemunire* offenses included an archbishop’s refusal to elect a royal nominee as bishop, and an assertion that Parliament had legislative authority without the sovereign.

**praenomen** (pree-noh-mən), *n.* [Latin] *Roman law*. The first of a person’s three names, given to distinguish the person from family members.

**praepositus** (pree-poz-ə-təs), *n.* [Latin] *Hist.* **1.** An officer next in authority to the alderman of a hundred. **2.** A steward or bailiff of an estate.

**praepositus villae** (pree-poz-ə-təs vil-ee), *n.* [Latin] *Hist.* A constable of a town; a petty constable.

**praerogativa regis** (pree-rog-ə-ti-və ree-jis), *n.* [Law Latin “of the Crown’s prerogative”] *Hist.* A declaration made at the time of Edward I (1272–1307) defining certain feudal and political rights of the Crown, including the right to wardship of an idiot’s lands to protect the idiot’s heirs from disinheritance or alienation. — Also termed *de praerogativa regis* (dee pree-rog-ə-ti-və ree-jis).

“The king’s right is distinctly stated in the document known as *praerogativa Regis*, which we believe to come from the early years of Edward I. The same document seems to be the oldest that gives us any clear information about a wardship of lunatics. The king is to provide that the lunatic and his family are properly maintained out of the income of his estate, and the residue is to be handed over to him upon his restoration to sanity, or, should he die without having recovered his wits, is to be administered by the ordinary for the good of his soul; but the king is to take nothing to his own use.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 481 (2d ed. 1898).

**praescriptio** (pri-skrip-shee-oh), *n.* [Latin] *Roman law*. **1.** A preliminary portion of a *formula* that defines the scope of action or states an exception or objection to the action. **2.** A defensive plea in an action to recover land by which the defendant asserts ownership based on continuous possession for a prescribed time. — Also termed (in sense 2) *praescriptio longi temporis*.

**praeses** (pree-seez), *n.* [Latin] **1.** Roman law. A governor of a province. **2.** The president of a college or university.

**praestare** (pree-stair-ee), *vb.* [Latin] Roman law. **1.** To perform an obligation. **2.** To undertake liability.

**praesumitur pro negante** (pri-zyoo-mə-tər proh ni-gan-tee). [Latin] It is presumed for the negative. • This is the rule of the House of Lords when the votes are equal on a motion.

**praesumptio** (pri-zəmp-shee-oh). [Latin] A presumption.

**praesumptio fortior** (pri-zəmp-shee-oh for-shee-ər or -or). [Latin] A strong presumption (of fact); a presumption strong enough to shift the burden of proof to the opposing party.

**praesumptio hominis** (pri-zəmp-shee-oh hom-ə-nis). [Latin] The presumption of an individual; that is, a natural presumption unfettered by rules.

**praesumptio juris** (pri-zəmp-shee-oh joor-is). [Latin] A presumption of law; that is, one in which the law assumes the existence of something until it is disproved. See *presumption of law* under PRESUMPTION.

**praesumptio Muciana** (pri-zəmp-shee-oh myoo-shee-ay-nə). [Latin] Roman law. The rebuttable presumption that in case of doubt a thing possessed by a married woman had been given to her by her husband. • The presumption was named after the jurist Quintus Mucius.

**praeteritio** (pree-tə or pret-ə-rish-ee-oh). [Latin] A testator's exclusion of an heir by passing the heir over.

**praetor** (pree-tər). [Latin] Roman law. A magistrate responsible for identifying and framing the legal issues in a case and ordering a lay judge (*judex*) to hear evidence and decide the case in accordance with the statement of the issues.

**praetor fidei-commissarius** (pree-tər fi-dee-i-kom-ə-sair-ee-əs). A special praetor having jurisdiction of cases involving trusts.

**praetorian edict.** See EDICT.

**praevaricator** (pree-var-ə-kay-tər). See PREVARICATOR.

**pratique** (pra-teek or prat-ik). *Maritime law.* A license allowing a vessel to trade in a particular country or port after complying with quarantine requirements or presenting a clean bill of health.

**praxis** (prak-sis). [Greek "doing; action"] In critical legal studies, practical action; the practice of living the ethical life in conjunction and in cooperation with others.

**prayer for relief.** A request addressed to the court and appearing at the end of a pleading; esp., a request for specific relief or damages. — Often shortened to *prayer*. — Also termed *demand for relief*.

"*The prayer for relief.* The plaintiff prays in his bill for the relief to which he supposes himself entitled on the case made out in the bill. This is called the *special prayer*. He then prays for general relief, usually in these words: 'And the plaintiff (or your orator) prays for such further or other relief as the nature of the case may require, and as may be agreeable to equity and good conscience.' Both prayers are generally inserted in the bill, — the special prayer first, the general following." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 69 (2d ed. 1899).

**general prayer.** A prayer for additional unspecified relief, traditionally using language such as, "Plaintiff additionally prays for such other and further relief to which she may show herself to be justly entitled." • The general prayer typically follows a special prayer.

**special prayer.** A prayer for the particular relief to which a plaintiff claims to be entitled.

**prayer in aid.** See AID PRAYER.

**prayer of process.** A conclusion in a bill in equity requesting the issuance of a subpoena if the defendant fails to answer the bill.

**preamble** (pree-am-bəl), *n.* An introductory statement in a constitution, statute, or other document explaining the document's basis and objective; esp., a statutory recital of the inconveniences for which the statute is designed to provide a remedy. — **preambulatory** (pree-am-byə-ler-ee), **preambular** (pree-am-byə-lər), *adj.*

**preappointed evidence.** See EVIDENCE.

**preaudience.** *English law.* The right of a senior barrister to be heard in court before other barristers.

**prebankruptcy**, *adj.* Occurring before the filing of a bankruptcy petition <prebankruptcy transactions>.

**prebend** (**preb**-ənd), *n.* **1.** A stipend granted in a cathedral church for the support of the members of the chapter. **2.** The property from which the stipend comes.

**prebendary** (**preb**-ən-der-ee). A person serving on the staff of a cathedral who receives a stipend from the cathedral's endowment.

**precariae** (pri-kair-ee-ee). [Law Latin "favors"] *Hist.* Day labor that tenants of certain manors were bound to give their lords at harvest time. — Also termed *preces*.

**precarious**, *adj.* Dependent on the will or pleasure of another; uncertain.

**precarious loan.** See LOAN.

**precarious possession.** See POSSESSION.

**precarious right.** See RIGHT.

**precarious trade.** See TRADE.

**precarium** (pri-kair-ee-əm). [Latin] **1.** *Roman law.* Property granted or lent, to be returned at the will of the grantor. **2.** *Hist.* An estate or tenure arising from a precarious grant, and usu. characterized by uncertainty or arduous conditions of tenure.

**precatory** (**prek**-ə-tor-ee), *adj.* (Of words) requesting, recommending, or expressing a desire for action, but usu. in a nonbinding way. ● An example of precatory language is "it is my wish and desire to . . ."

**precatory trust.** See TRUST.

**precedence** (**pres**-ə-dənts or prə-**seed**-ənts), *n.* **1.** The act or state of going before; esp., the order or priority in place or time observed by or for persons of different statuses (such as political dignitaries) on the basis of rank during ceremonial events. **2.** The order in which persons may claim the right to administer an intestate's estate. ● The traditional order is (1) surviving spouse, (2) next of kin, (3) creditors, and (4) public administrator.

**precedent** (prə-**seed**-ənt also **pres**-ə-dənt), *adj.* Preceding in time or order <condition precedent>.

**precedent** (**pres**-ə-dənt), *n.* **1.** The making of law by a court in recognizing and applying new rules while administering justice. **2.** A decided case that furnishes a basis for determining later cases involving similar facts or issues. — **precedential**, *adj.* See STARE DECISIS.

"In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts." William M. Lile et al., *Brief Making and the Use of Law Books* 288 (3d ed. 1914).

"A precedent . . . is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large." John Salmond, *Jurisprudence* 191 (Glanville L. Williams ed., 10th ed. 1947).

"One may say, roughly, that a case becomes a precedent only for such a general rule as is necessary to the actual decision reached, when shorn of unessential circumstances." 1 James Parker Hall, Introduction, *American Law and Procedure* xlviii (1952).

"One may often accord respect to a precedent not by embracing it with a frozen logic but by drawing from its thought the elements of a new pattern of decision." Lon L. Fuller, *Anatomy of the Law* 151 (1968).

**binding precedent.** A precedent that a court must follow. ● For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. — Also termed *authoritative precedent*; *binding authority*. Cf. *imperative authority* under AUTHORITY (4).

**declaratory precedent.** A precedent that is merely the application of an already existing legal rule.

**original precedent.** A precedent that creates and applies a new legal rule.

**persuasive precedent.** A precedent that a court may either follow or reject, but that is entitled to respect and careful consideration. ● For example, if the case was decided in a neighboring jurisdiction, the court might evaluate the earlier court's reasoning without being bound to decide the same way.

**precedent sub silentio** (səb sə-len-shee-oh). A legal question that was neither argued nor considered in a judicial decision that is or might be treated as a precedent.

**3. DOCTRINE OF PRECEDENT. 4.** A form of pleading or property-conveyancing instrument. ● Precedents are often compiled in book form

and used by lawyers as guides for preparing similar documents.

"Collections of Precedents have existed from very early times. In this connection precedents must not be confused with judicial precedents or case law. We refer here simply to common-form instruments compiled for use in practice, whereby the lawyer can be more or less certain that he is using the correct phraseology for the particular case before him. They were used both in conveyancing and litigation. . . . It is interesting to note that these precedents were apparently among the first legal works to be published after printing was introduced. Collections of conveyancing precedents continued to be brought up to date or new volumes issued. . . ." A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 42-43 (5th ed. 1958).

**prece partium** (pree-see pah-rshee-əm). [Law Latin] On the prayer of the parties.

**precept** (pree-sept). **1.** A standard or rule of conduct; a command or principle <several legal precepts govern here>. **2.** A writ or warrant issued by an authorized person demanding another's action, such as a judge's order to an officer to bring a party before the court <the sheriff executed the precept immediately>.

**preces** (pree-seez). [Latin "prayers"] *Roman law*. A petition addressed to the emperor by a private person. Cf. RESCRIPT (3).

**preces primariae** (pree-seez pri-mair-ee-ee). [Latin] *Hist.* The right of the sovereign to appoint a person to fill a vacant prebendary office after the sovereign's accession. • This right was exercised during the reign of Edward I. — Also termed *primae preces*. See PREBENDARY.

**precinct**. A geographical unit of government, such as an election district, a police district, or a judicial district.

**precipe** (pre-sə-pee). See PRAECIPE.

**précis** (pray-see or pray-see), *n.* [French] A concise summary of a text's essential points; an abstract. Pl. **précis** (pray-seez or pray-seez).

**precludi non debet** (pri-kloo-di non dee-bet or deb-et). [Latin "he ought not to be barred"] *Hist.* The beginning of a plaintiff's reply to a plea in bar in which the plaintiff objects to being barred from maintaining the action.

**preclusion order**. See ORDER (2).

**precompounded prescription drug**. See DRUG.

**preconceived malice**. See MALICE AFORETHOUGHT.

**precontract**. See CONTRACT.

**predate**, *vb.* See ANTEDATE.

**predatory intent**. See INTENT (1).

**predatory pricing**. Unlawful below-cost pricing intended to eliminate specific competitors and reduce overall competition; pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run. See ANTI-TRUST.

**predecease**, *vb.* To die before (another) <she predeceased her husband>.

**predecessor**. **1.** One who precedes another in an office or position. **2.** An ancestor.

**predecisional**, *adj.* Of, relating to, or occurring during the time before a decision.

**predial** (pree-dee-əl), *adj.* Of, consisting of, relating to, or attached to land <predial servitude>. — Also spelled *praedial*.

**predial servitude**. See *servitude appurtenant* under SERVITUDE.

**predicate act**. In the law of RICO, one of two or more related acts of racketeering necessary to establish a pattern. See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

**predicate fact**. See FACT.

**prediction theory**. See BAD-MAN THEORY; PREDICTIVE THEORY OF LAW.

**predictive theory of law**. The view that the law is nothing more than a set of predictions about what the courts will decide in given circumstances. • This theory is embodied in Holmes's famous pronouncement, "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 460-61 (1897). — Also termed *prediction theory*. Cf. BAD-MAN THEORY.



**predisposition.** A person's inclination to engage in a particular activity; esp., an inclination that vitiates a criminal defendant's claim of entrapment.

**preemption** (pree-emp-shən), *n.* **1.** The right to buy before others. See RIGHT OF PREEMPTION. **2.** The purchase of something under this right. **3.** An earlier seizure or appropriation. **4.** The occupation of public land so as to establish a preemptive title. **5.** *Constitutional law.* The principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation. — Also termed (in sense 5) *federal preemption*. — **preempt**, *vb.* — **preemptive**, *adj.* See COMPLETE-PREEMPTION DOCTRINE.

**Garmon preemption.** *Labor law.* A doctrine prohibiting state and local regulation of activities that are actually or arguably (1) protected by the National Labor Relations Act's rules relating to the right of employees to organize and bargain collectively, or (2) prohibited by the National Labor Relations Act's provision that governs unfair labor practices. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773 (1959). — Also termed *Garmon doctrine*. See COLLECTIVE BARGAINING; UNFAIR LABOR PRACTICE.

**Machinists preemption.** *Labor law.* The doctrine prohibiting state regulation of an area of labor activity or management-union relations that Congress has intentionally left unregulated. *Lodge 76, Int'l Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 96 S.Ct. 2548 (1976).

**preemption claimant.** One who has settled on land subject to preemption, intending in good faith to acquire title to it.

**preemption right.** The privilege to take priority over others in claiming land subject to preemption. • The privilege arises from the holder's actual settlement of the land.

**preemptive right.** A shareholder's privilege to purchase newly issued stock — before the shares are offered to the public — in an amount proportionate to the shareholder's current holdings in order to prevent dilution of the shareholder's ownership interest. • This right must be exercised within a fixed period, usu. 30 to 60 days. — Also termed *subscription privilege*. See SUBSCRIPTION RIGHT. Cf. *rights offering* under OFFERING.

**preexisting condition.** See CONDITION (2).

**preexisting duty.** See DUTY (1).

**preexisting-duty rule.** *Contracts.* The rule that if a party does or promises to do what the party is already legally obligated to do — or refrains or promises to refrain from doing what the party is already legally obligated to refrain from doing — the party has not incurred detriment. • This rule's result is that the promise does not constitute adequate consideration for contractual purposes. For example, if a builder agrees to construct a building for a specified price but later threatens to walk off the job unless the owner promises to pay an additional sum, the owner's new promise is not enforceable because, under the preexisting-duty rule, there is no consideration for that promise. — Also termed *preexisting-legal-duty rule*.

**prefect** (pree-fekt), *n.* **1.** A high official or magistrate put in charge of a particular command, department, or region. **2.** In New Mexico, a probate judge.

**prefer**, *vb.* **1.** To put forward or present for consideration; esp. (of a grand jury), to bring (a charge or indictment) against a criminal suspect <the defendant claimed he was innocent of the charges preferred against him>. **2.** To give priority to, such as to one creditor over another <the statute prefers creditors who are first to file their claims>.

**preference.** **1.** The act of favoring one person or thing over another; the person or thing so favored. **2.** Priority of payment given to one or more creditors by a debtor; a creditor's right to receive such priority. **3.** *Bankruptcy.* PREFERENTIAL TRANSFER.

**insider preference.** A transfer of property by a bankruptcy debtor to an insider more than 90 days before but within one year after the filing of the bankruptcy petition.

**liquidation preference.** A preferred shareholder's right, once the corporation is liquidated, to receive a specified distribution before common shareholders receive anything.

**voidable preference.** See PREFERENTIAL TRANSFER.

**preference shares.** See *preferred stock* under STOCK.

**preferential assignment.** See PREFERENTIAL TRANSFER.

**preferential debt.** See DEBT.

**preferential rule.** *Evidence.* A rule that prefers one kind of evidence to another. • It may work provisionally, as when a tribunal refuses to consider one kind of evidence until another kind (presumably better) is shown to be unavailable, or it may work absolutely, as when the tribunal refuses to consider anything but the better kind of evidence.

“There are only three or four . . . sets of [preferential] rules. There is a rule preferring the production of the *original of a document*, in preference to a copy. There is a rule requiring the *attesting witness* to a will to be summoned to evidence its execution. And there is a rule preferring the magistrate’s *official report* of testimony taken before him. Then there are a few miscellaneous rules, such as the officially certified enrollment of a statute, etc.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 219 (1935).

**preferential shop.** See SHOP.

**preferential tariff.** See TARIFF (2).

**preferential transfer.** *Bankruptcy.* A prebankruptcy transfer made by an insolvent debtor to or for the benefit of a creditor, thereby allowing the creditor to receive more than its proportionate share of the debtor’s assets; specif., an insolvent debtor’s transfer of a property interest for the benefit of a creditor who is owed on an earlier debt, when the transfer occurs no more than 90 days before the date when the bankruptcy petition is filed or (if the creditor is an insider) within one year of the filing, so that the creditor receives more than it would otherwise receive through the distribution of the bankruptcy estate. • Under the circumstances described in 11 USCA § 547, the bankruptcy trustee may recover — for the estate’s benefit — a preferential transfer from the transferee. — Also termed *preference*; *voidable preference*; *voidable transfer*; *preferential assignment*. Cf. FRAUDULENT CONVEYANCE (2).

**preferred, adj.** Possessing or accorded a priority or privilege <a preferred claim>.

**preferred creditor.** See CREDITOR.

**preferred dividend.** See DIVIDEND.

**preferred docket.** See DOCKET (2).

**preferred-provider organization.** A group of healthcare providers (such as doctors, hospitals, and pharmacies) that agree to provide medical services at a discounted cost to covered persons in a given geographic area. — Abbr. PPO. Cf. HEALTH-MAINTENANCE ORGANIZATION.

**preferred stock.** See STOCK.

**preferring of charges.** *Military law.* The formal completion of a charge sheet, which includes signing and swearing to the charges and specifications. • Only a person subject to the Uniform Code of Military Justice can prefer charges. Cf. INITIATION OF CHARGES.

**prehearing conference.** An optional conference for the discussion of procedural and substantive matters on appeal, usu. held in complex civil, criminal, tax, and agency cases. • Those attending are typically the attorneys involved in the case as well as a court representative such as a judge, staff attorney, or deputy clerk. Fed. R. App. P. 33.

“The prehearing conference, if held, generally is scheduled after the time for appeal and cross-appeal has passed, and as soon as it becomes apparent that the case is complex due to the legal issues, the length of the record, or the number of parties. In a complex or multi-party case, the conference provides a forum in which to discuss briefing responsibilities, timing, and handling the record and joint appendix. There may be some discussion of the amount of oral argument the parties desire and how that argument will be divided . . .” Michael E. Tigar, *Federal Appeals: Jurisdiction and Practice* § 8.06, at 309–10 (2d ed. 1993).

**prejudice, n. 1.** Damage or detriment to one’s legal rights or claims. See *dismissal with/without prejudice* under DISMISSAL.

**legal prejudice.** A condition that, if shown by a party, will usu. defeat the opposing party’s action; esp., a condition that, if shown by the defendant, will defeat a plaintiff’s motion to dismiss a case without prejudice. • The defendant may show that dismissal will deprive the defendant of a substantive property right or preclude the defendant from raising a defense that will be unavailable or endangered in a second suit.

**undue prejudice.** The harm resulting from a fact-trier’s being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.

**2.** A preconceived judgment formed without a factual basis; a strong bias. — **prejudice, vb.** — **prejudicial, adj.**

**prejudicial error.** See *reversible error* under ERROR (2).

**prejudicial publicity.** Extensive media attention devoted to an upcoming civil or criminal trial. • Under the Due Process Clause, exten-

sive coverage of a criminal trial may deprive the defendant of a fair trial.

**preliminary**, *adj.* Coming before and usu. leading up to the main part of something <preliminary negotiations>.

**preliminary complaint.** See COMPLAINT.

**preliminary crime.** See *inchoate offense* under OFFENSE (1).

**preliminary evidence.** See EVIDENCE.

**preliminary hearing.** A criminal hearing (usu. conducted by a magistrate) to determine whether there is sufficient evidence to prosecute an accused person. • If sufficient evidence exists, the case will be set for trial or bound over for grand-jury review, or an information will be filed in the trial court. — Also termed *preliminary examination; probable-cause hearing; bindover hearing; examining trial*. Cf. ARRAIGNMENT.

**preliminary injunction.** See INJUNCTION.

**preliminary inquiry.** *Military law.* The initial investigation of a reported or suspected violation of the Uniform Code of Military Justice. Cf. PRETRIAL INVESTIGATION.

**preliminary-inquiry officer.** *Military law.* The person, usu. an officer, who conducts a preliminary inquiry.

**preliminary letter.** See INVITATION TO NEGOTIATE.

**preliminary objection.** *Int'l law.* In a case before an international tribunal, an objection that, if upheld, would render further proceedings before the tribunal impossible or unnecessary. • An objection to the court's jurisdiction is an example of a preliminary objection.

**preliminary proof.** See PROOF.

**preliminary prospectus.** See PROSPECTUS.

**preliminary statement.** The introductory part of a brief or memorandum in support of a motion, in which the advocate summarizes the essence of what follows. • In at least two jurisdictions, New York and New Jersey, the preliminary statement is a standard part of court papers. In many other jurisdictions, advocates do not routinely include it. But preliminary

statements are typically allowed, even welcomed, though not required.

**preliminary warrant.** See WARRANT (1).

**premarital agreement.** See PRENUPTIAL AGREEMENT.

**prematurity.** **1.** The circumstance existing when the facts underlying a plaintiff's complaint do not yet create a live claim. Cf. RIPENESS. **2.** The affirmative defense based on this circumstance.

**premeditated**, *adj.* Done with willful deliberation and planning; consciously considered beforehand <a premeditated killing>.

**premeditated malice.** See MALICE AFORETHOUGHT.

**premeditation**, *n.* Conscious consideration and planning that precedes some act (such as committing a crime). — **premeditate**, *vb.*

**premier serjeant.** See SERJEANT-AT-LAW.

**premise (prem-is)**, *n.* A previous statement or contention from which a conclusion is deduced. — Also spelled (in BrE) *premiss*. — **premise (prem-is or pri-miz)**, *vb.*

**premises (prem-ə-siz).** **1.** Matters (usu. preliminary facts or statements) previously referred to in the same instrument <wherefore, premises considered, the plaintiff prays for the following relief>. **2.** A house or building, along with its grounds <smoking is not allowed on these premises>.

**premises liability.** A landowner's or landholder's tort liability for conditions or activities on the premises.

**premises rule.** See PARKING-LOT RULE.

**premium**, *n.* **1.** The periodic payment required to keep an insurance policy in effect. — Also termed *insurance premium*.

**advance premium.** A payment made before the start of the period covered by the insurance policy.

**earned premium.** The portion of an insurance premium applicable to the coverage period that has already expired. • For example, if the total premium for a one-year insurance

policy is \$1,200, the earned premium after three months is \$300.

**gross premium.** **1.** The net premium plus expenses (i.e., the loading), less the interest factor. See LOADING; INTEREST FACTOR. **2.** The premium for participating life insurance. See *participating insurance* under INSURANCE.

**natural premium.** The actual cost of life insurance based solely on mortality rates. ● This amount will be less than a net premium. See *net premium*.

**net level annual premium.** A net premium that stays the same each year.

**net premium.** **1.** Generally, the premium amount for an insurance policy less agent commissions. **2.** The portion of the premium that covers the estimated cost of claims. **3.** The money needed to provide benefits under an insurance policy. ● The net premium in a life-insurance policy is calculated by using an assumed interest and mortality-table rate; it does not include additional expense amounts that will be charged to the policyholder. — Also termed *net valuation premium*.

**net single premium.** The money that must be collected from a policyholder at one time to guarantee enough money to pay claims made on an insurance policy. ● This amount assumes that interest accrues at an expected rate and is based on a prediction of the likelihood of certain claims.

**net valuation premium.** See *net premium*.

**unearned premium.** The portion of an insurance premium applicable to the coverage period that has not yet occurred. ● In the same example as above under *earned premium*, the unearned premium after three months is \$900.

**2.** A sum of money paid in addition to a regular price, salary, or other amount; a bonus. **3.** The amount by which a security's market value exceeds its face value. — Also termed (specif.) *bond premium*. Cf. DISCOUNT (3).

**control premium.** A premium paid for shares carrying the power to control a corporation. ● The control premium is often computed by comparing the aggregate value of the controlling block of shares with the cost that would be incurred if the shares could be acquired at the going market price per share.

**4.** The amount paid to buy a securities option. — Also termed (in sense 4) *option premium*.

**premium bond.** See BOND (3).

**premium loan.** See LOAN.

**premium note.** See NOTE (1).

**premium on capital stock.** See *paid-in surplus* under SURPLUS.

**premium rate.** *Insurance.* The price per unit of life insurance. ● It is usu. expressed as a cost per thousands of dollars of coverage. Life insurers use three factors — the interest factor, the mortality factor, and the risk factor — to calculate premium rates. — Sometimes shortened to *rate*. See INTEREST FACTOR; MORTALITY FACTOR; RISK FACTOR.

**premium stock.** See STOCK.

**premium tax.** See TAX.

**prenatal tort.** See TORT.

**prender de baron** (*pre*-dər də *bar*-ən). [Law French “a taking of husband”] *Hist.* A plea asserting that the former wife of a murder victim should not be allowed to appeal a murder case against the alleged killer because she has since remarried.

**prenup, n.** See PRENUPTIAL AGREEMENT.

**prenuptial** (*pre*-nəp-shəl), *adj.* Made or occurring before marriage; premarital. — Also termed *antenuptial* (*an*-tee-nəp-shəl).

**prenuptial agreement.** An agreement made before marriage usu. to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse. — Also termed *antenuptial agreement*; *antenuptial contract*; *premarital agreement*; *premarital contract*; *marriage settlement*. — Sometimes shortened to *prenup*. See SETTLEMENT (2). Cf. POSTNUPTIAL AGREEMENT.

**prenuptial gift.** See GIFT.

**prenuptial will.** See WILL.

**prepaid expense.** See EXPENSE.

**prepaid income.** See INCOME.

**prepaid interest.** See INTEREST (3).

**prepaid legal services.** An arrangement — usu. serving as an employee benefit — that

enables a person to make advance payments for future legal services.

**preparation.** *Criminal law.* The act or process of devising the means necessary to commit a crime. Cf. ATTEMPT.

**prepayment clause.** A loan-document provision that permits a borrower to satisfy a debt before its due date, usu. without paying a penalty.

**prepayment penalty.** A charge assessed against a borrower who elects to pay off a loan before it is due.

**prepetition** (pree-pə-tish-ən), *adj.* Occurring before the filing of a petition (esp. in bankruptcy) <prepetition debts>.

**preponderance** (pri-pon-dər-ənts), *n.* Superiority in weight, importance, or influence. — **preponderate** (pri-pon-dər-əyt), *vb.* — **preponderant** (pri-pon-dər-ənt), *adj.*

**preponderance of the evidence.** The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. ● This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. — Also termed *preponderance of proof*; *balance of probability*. Cf. *clear and convincing evidence* under EVIDENCE.

**prerogative** (pri-rog-ə-tiv), *n.* An exclusive right, power, privilege, or immunity, usu. acquired by virtue of office. — **prerogative**, *adj.*

**prerogative court.** In New Jersey, a probate court.

**prerogative writ.** See *extraordinary writ* under WRIT.

**pres** (pray). [Law French] Near. See CY PRES.

**presale.** The sale of real property (such as condominium units) before construction has begun.

**prescribable** (pri-skrīb-ə-bəl), *adj.* (Of a right) that can be acquired by prescription.

## presence-of-the-testator rule

**prescription, n. 1.** The effect of the lapse of time in creating and destroying rights.

**liberative prescription.** *Civil law.* A bar to a lawsuit resulting from its untimely filing. ● This term is essentially the civil-law equivalent to a statute of limitations. See STATUTE OF LIMITATIONS.

**2.** The acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period. — Also termed *positive prescription*; *acquisitive prescription*. Cf. ADVERSE POSSESSION.

**prescription in a que estate** (ah kee). [Law French “prescription in whose estate”] A claim of prescription based on the immemorial enjoyment of the right by the claimant and the former owners whose estate the claimant has succeeded to.

**3.** The extinction of a title or right by failure to claim or exercise it over a long period. — Also termed *negative prescription*; *extinctive prescription*. **4.** The act of establishing authoritative rules; a rule so established. **5. Int’l law.** The acquisition of a territory through a continuous and undisputed exercise of sovereignty over it. — **prescribe, vb.** Cf. PROSCRIPTION.

**prescriptive easement.** See EASEMENT.

**prescriptive right.** A right obtained by prescription <after a nuisance has been continuously in existence for 20 years, a prescriptive right to continue it is acquired as an easement appurtenant to the land on which it exists>.

**presence-of-defendant rule.** The principle that a felony defendant is entitled to be present at every major stage of the criminal proceeding. Fed. R. Crim. P. 43.

**presence of the court.** The company or proximity of the judge or other courtroom official. ● For purposes of contempt, an action is in the presence of the court if it is committed within the view of the judge or other person in court and is intended to disrupt the court’s business.

“Some decisions indicate that the term ‘in the presence of the court’ is to be given a liberal interpretation, that ‘the court’ consists not of the judge, the courtroom, the jury, or the jury room individually, but of all of these combined, and that the court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to law.” 17 Am. Jur. 2d *Contempt* § 19 (1990).

**presence-of-the-testator rule.** The principle that a testator must be aware (through sight or

other sense) that the witnesses are signing the will. • Many jurisdictions interpret this requirement liberally, and the Uniform Probate Code has dispensed with it.

**present**, *adj.* **1.** Now existing; at hand <a present right to the property>. **2.** Being the one under consideration <the present appeal does not deal with that issue>. **3.** In attendance; not elsewhere <all present voted for him>.

**present ability.** See ABILITY.

**presentation.** **1.** The delivery of a document to an issuer or named person for the purpose of initiating action under a letter of credit; PRESENTMENT (3). **2.** *Hist. Eccles. law.* A benefice patron's recommendation of a person to fill a vacant benefice. • If the benefice's bishop rejected the appointee, the patron could enforce the right to fill the vacancy by writ of *quare impedit* in the Court of Common Pleas. See QUARE IMPEDIT. Cf. ADVOWSON; INSTITUTION.

**present case.** See *case at bar* under CASE.

**present conveyance.** See CONVEYANCE.

**present covenant.** See COVENANT (4).

**presentence hearing.** A proceeding at which a judge or jury receives and examines all relevant information regarding a convicted criminal and the related offense before passing sentence. — Also termed *sentencing hearing*.

**presentence investigation report.** A probation officer's detailed account of a convicted defendant's educational, criminal, family, and social background, conducted at the court's request as an aid in passing sentence. — Abbr. PSI. — Often shortened to *presentence report*.

**present enjoyment.** See ENJOYMENT.

**presenter.** *Commercial law.* Any person presenting a document (such as a draft) to an issuer for honor. UCC § 5-102.

**present estate.** See ESTATE.

**presenting bank.** See BANK.

**presenting jury.** See GRAND JURY.

**present interest.** See INTEREST (2).

**presentment** (pri-zent-mənt). **1.** The act of presenting or laying before a court or other tribunal a formal statement about a matter to be dealt with legally. **2.** A formal written accusation returned by a grand jury on its own initiative, without a prosecutor's previous indictment request.

"A grand jury has only two functions, either to indict or to return a 'no bill.' The Constitution speaks also of a 'presentment,' but this is a term with a distinct historical meaning now not well understood. Historically presentment was the process by which a grand jury initiated an independent investigation and asked that a charge be drawn to cover the facts should they constitute a crime. With United States attorneys now always available to advise grand juries, proceeding by presentment is an outmoded practice." 1 Charles Alan Wright, *Federal Practice and Procedure* § 110, at 459 (3d ed. 1999).

**3.** The formal production of a negotiable instrument for acceptance or payment.

"Presentment and dishonor occur, for instance, when the holder of a check attempts to cash it at the drawee bank, but payment is refused because the drawer lacks sufficient funds on deposit. The demand for payment is presentment. The bank's refusal to pay is dishonor." 2 James J. White & Robert S. Summers, *Uniform Commercial Code* § 16-8, at 100 (4th ed. 1995).

**presentment for acceptance.** Production of an instrument to the drawee, acceptor, or maker for acceptance. • This type of presentment may be made anytime before maturity, except that with bills payable at sight, after demand, or after sight, presentment must be made within a reasonable time.

**presentment for payment.** Production of an instrument to the drawee, acceptor, or maker for payment. • This type of presentment must be made on the date when the instrument is due.

**presentment of Englishry.** *Hist.* The offering of proof that a slain person was English rather than (before the Conquest) a Dane or (after the Conquest) a Norman. • This requirement was issued first by the conquering Danes and then by the Normans to protect these groups from the English by the threat of a village- or hundred-wide amercement if the inhabitants failed to prove that a dead person found among them was English.

**presentment warranty.** See WARRANTY (2).

**present recollection refreshed.** *Evidence.* A witness's memory that has been enhanced by showing the witness a document that describes the relevant events. • The document itself is merely a memory stimulus and is not admitted in evidence. Fed. R. Evid. 612. — Also termed

*refreshing recollection; present recollection revived.* Cf. PAST RECOLLECTION RECORDED.

**presents**, *n. pl.* *Archaic.* The instrument under consideration. • This is usu. part of the phrase *these presents*, which is part of the longer phrase *know all men by these presents* (itself a loan translation from the Latin *noverint universi per praesentes*). See KNOW ALL MEN BY THESE PRESENTS.

**present sale.** See SALE.

**present sense impression.** *Evidence.* One's perception of an event or condition, formed during or immediately after the fact. • A statement containing a present sense impression is admissible even if it is hearsay. Fed. R. Evid. 803(1). Cf. EXCITED UTTERANCE.

**present use.** See USE (4).

**present value.** The sum of money that, with compound interest, would amount to a specified sum at a specified future date; future value discounted to its value today. — Also termed *present worth*.

**adjusted present value.** An asset's value determined by adding together its present value and the value added by capital-structure effects. — Abbr. APV.

**net present value.** The present value of net cash flow from a project, discounted by the cost of capital. • This value is used to evaluate the project's investment potential. — Abbr. NPV.

**preside**, *vb.* **1.** To occupy the place of authority, esp. as a judge during a hearing or trial <preside over the proceedings>. **2.** To exercise management or control <preside over the estate>.

**president**, *n.* **1.** The chief political executive of a government; the head of state. **2.** The chief executive officer of a corporation or other organization. — **presidential**, *adj.*

**presidential elector.** See ELECTOR.

**Presidential message.** See MESSAGE.

**president judge.** See *presiding judge* under JUDGE.

**president of a court-martial.** *Military law.* The senior member in rank present at a court-martial trial.

**President of the United States.** The highest executive officer of the federal government of the United States. • The President is elected to a four-year term by a majority of the presidential electors chosen by popular vote from the states. The President must be a natural citizen, must be at least 35 years old, and must have been a resident for 14 years within the United States. U.S. Const. art. II, § 1.

**presiding judge.** See JUDGE.

**presiding juror.** See JUROR.

**presiding officer.** See OFFICER (2).

**press**, *n.* **1.** The news media; print and broadcast news organizations collectively. **2.** *Hist.* A piece of parchment, as one sewed together to make up a roll or record of judicial proceedings.

**prest** (*prest*). *Hist.* A duty to be paid by the sheriff upon his account in the Exchequer or for money remaining in his custody.

**prestation** (*pre-stay-shən*). *Hist.* **1.** A payment (or *presting*) of money. **2.** The rendering of a service.

**prest money.** *Hist.* A monetary payment made to a soldier or sailor on enlistment.

**presume**, *vb.* To assume beforehand; to suppose to be true in the absence of proof.

**presumed father.** See FATHER.

**presumed-seller test.** A method of imposing product liability on a manufacturer if the manufacturer, having full knowledge of the product's dangerous propensities, would be negligent in placing the product on the market.

**presumption.** A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts. • Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption. See BURDEN OF PRODUCTION.

"A presumption may be defined to be an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connec-

tion." William P. Richardson, *The Law of Evidence* § 53, at 25 (3d ed. 1928).

**absolute presumption.** See *conclusive presumption*.

**artificial presumption.** See *presumption of law*.

**conclusive presumption.** A presumption that cannot be overcome by any additional evidence or argument <it is a conclusive presumption that a child under the age of seven is incapable of committing a felony>. — Also termed *absolute presumption*; *irrebuttable presumption*; *mandatory presumption*; *presumption juris et de jure*. Cf. *rebuttable presumption*.

"'Conclusive presumptions' or 'irrebuttable presumptions' are usually mere fictions, to disguise a rule of substantive law (e.g., the conclusive presumption of malice from an unexcused defamation); and when they are not fictions, they are usually repudiated by modern courts." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

"Conclusive presumptions, sometimes called irrebuttable presumptions of law, are really rules of law. Thus it is said that a child under the age of fourteen years is conclusively presumed to be incapable of committing rape. This is only another way of saying that such a child cannot be found guilty of rape." Richard Eggleston, *Evidence, Proof and Probability* 92 (1978).

**conditional presumption.** See *rebuttable presumption*.

**conflicting presumption.** One of two or more presumptions that would lead to opposite results. — Also termed *inconsistent presumption*.

"'Conflicting presumptions' are simply two ordinary presumptions that would give opposite results; usually they are really successive presumptions. E.g., where A proves himself to be the son of N, wife of M, but M and N were already separated, and later M married P, and had a son B, the later marriage of M might presume a prior divorce from N before separation to make it valid, and yet the birth of A from a married mother might be presumed legitimate, and thus the question whether A or B was the legitimate son would be attended by opposing presumptions. But in this aspect the doctrine of presumptions is clouded with difficulties and leads to much vain speculation and logical unrealism." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 454 (1935).

**disputable presumption.** See *rebuttable presumption*.

**factual presumption.** See *presumption of fact*.

**heeding presumption.** A rebuttable presumption that an injured product user would have followed a warning label had the product manufacturer provided one.

**inconsistent presumption.** See *conflicting presumption*.

**irrebuttable presumption.** See *conclusive presumption*.

**legal presumption.** See *presumption of law*.

**mandatory presumption.** See *conclusive presumption*.

**McClanahan presumption.** See MCCLANAHAN PRESUMPTION.

**mixed presumption.** A presumption containing elements of both law and fact.

**Morgan presumption.** See MORGAN PRESUMPTION.

**natural presumption.** A deduction of one fact from another, based on common experience.

**permissive presumption.** A presumption that a trier of fact is free to accept or reject from a given set of facts. — Also termed *permissive inference*.

**presumption juris et de jure.** See *conclusive presumption*.

**presumption of fact.** A type of rebuttable presumption that may be, but as a matter of law need not be, drawn from another established fact or group of facts <the possessor of recently stolen goods is, by presumption of fact, considered the thief>. — Also termed *factual presumption*.

**presumption of general application.** A presumption that applies across the board to all legislation, as a result of which lawmakers need not list each such presumption in all bills.

"One function of the word 'presumption' in the context of statutory interpretation is to state the result of this legislative reliance (real or assumed) on firmly established legal principles. There is a 'presumption' that *mens rea* is required in the case of statutory crimes, and a 'presumption' that statutory powers must be exercised reasonably. These presumptions apply although there is no question of linguistic ambiguity in the statutory wording under construction, and they may be described as 'presumptions of general application.' At the level of interpretation, their function is the promotion of brevity on the part of the draftsman. Statutes make dreary enough reading as it is, and it would be ridiculous to insist in each instance upon an enumeration of the general principles taken for granted." Rupert Cross, *Statutory Interpretation* 142-43 (1976).

**presumption of intent.** A permissive presumption that a criminal defendant who intended to commit an act did so.

**presumption of law.** A legal assumption that a court is required to make if certain facts are established and no contradictory evi-



dence is produced <by presumption of law, a criminal defendant is considered innocent until proven guilty beyond a reasonable doubt>. — Also termed *legal presumption*; *artificial presumption*; *praesumptio juris*.

**prima facie presumption.** See *rebuttable presumption*.

**procedural presumption.** A presumption that may be rebutted by credible evidence.

**rebuttable presumption.** An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. — Also termed *prima facie presumption*; *disputable presumption*; *conditional presumption*; *praesumptio juris*. Cf. *conclusive presumption*.

**statutory presumption.** A rebuttable or conclusive presumption that is created by statute.

**Thayer presumption.** See THAYER PRESUMPTION.

**presumption of death.** A presumption that arises on the unexpected disappearance and continued absence of a person for an extended period, commonly seven years.

**presumption of fact.** See PRESUMPTION.

**presumption-of-fertility rule.** See FERTILE-OCTOGENARIAN RULE.

**presumption of general application.** See PRESUMPTION.

**presumption-of-identity rule.** The common-law rule that unless there is a specific, applicable statute in another state, a court will presume that the common law has developed elsewhere identically with how it has developed in the court's own state, so that the court may apply its own state's law. • Today this rule applies primarily in Georgia. See *Shorewood Packaging Corp. v. Commercial Union Ins.*, 865 F. Supp. 1577 (N.D. Ga. 1994).

**presumption of innocence.** The fundamental criminal-law principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence.

**presumption of intent.** See PRESUMPTION.

**presumption of law.** See PRESUMPTION.

**presumption of legitimacy.** The presumption that the husband of a woman who gives birth is the father of the child.

**presumption of natural and probable consequences.** *Criminal law.* The presumption that *mens rea* may be derived from proof of the defendant's conduct.

**presumption of survivorship.** The presumption that one of two or more victims of a common disaster survived the others, based on the supposed survivor's youth, good health, or other reason rendering survivorship likely.

**presumption of validity.** *Patents.* The assumption that the holder of a patent is entitled to a statutory presumption of validity.

**presumptive** (pri-zəmp-tiv), *adj.* **1.** Giving reasonable grounds for belief or presumption. **2.** Based on a presumption. — **presumptively**, *adv.*

**presumptive authority.** See *implied authority* under AUTHORITY (1).

**presumptive damages.** See *punitive damages* under DAMAGES.

**presumptive death.** See DEATH.

**presumptive evidence.** See EVIDENCE.

**presumptive heir.** See *heir presumptive* under HEIR.

**presumptive notice.** See *implied notice* under NOTICE.

**presumptive proof.** See *conditional proof* under PROOF.

**presumptive sentence.** See SENTENCE.

**presumptive title.** See TITLE (2).

**presumptive trust.** See *resulting trust* under TRUST.

**pretax**, *adj.* Existing or occurring before the assessment or deduction of taxes <pretax income>.

**pretax earnings.** See EARNINGS.

**prête-nom** (pret-nohm). [French] One who lends his name.

**preterlegal** (pree-tər-lee-gəl), *adj.* *Rare.* Beyond the range of what is legal; not according to law <preterlegal customs>.

**pretermis-sion** (pree-tər-mish-ən). **1.** The condition of one who is pretermitted, as an heir of a testator. **2.** The act of omitting an heir from a will.

**pretermis-sion statute.** See PRETERMITTED-HEIR STATUTE.

**preterm-it** (pree-tər-mit), *vb.* **1.** To ignore or disregard purposely <the court pretermitted the constitutional question by deciding the case on procedural grounds>. **2.** To neglect or overlook accidentally <the third child was pretermitted in the will>.

**pretermitted child.** See *pretermitted heir* under HEIR.

**pretermitted defense.** See DEFENSE (1).

**pretermitted heir.** See HEIR.

**pretermitted-heir statute.** A state law that grants a pretermitted heir the right to inherit a share of the testator's estate, usu. by treating the heir as though the testator had died intestate. — Also termed *pretermis-sion statute*.

**pretermitted spouse.** See *pretermitted heir* under HEIR.

**pretext** (pree-tekst), *n.* A false or weak reason or motive advanced to hide the actual or strong reason or motive. — **pretextual** (pree-tekst-choo-əl), *adj.*

**pretextual arrest.** See ARREST.

**pretextus** (pree-tekst-təs). [Latin] A pretext.

**pretium** (pree-shee-əm). [Latin] Price; value; worth.

**pretium affectionis** (pree-shee-əm ə-fek-shee-oh-nis). An enhanced value placed on a thing by the fancy of its owner, growing out of an attachment for the specific article and its associations; sentimental value. • This value is not taken as a basis for measuring damages.

**pretium periculi** (pree-shee-əm pə-rik-yə-li). The price of the risk, such as the premium paid on an insurance policy.

**pretorial court** (pri-tor-ee-əl). See COURT.

**pretrial conference.** An informal meeting at which opposing attorneys confer, usu. with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried. • The conference takes place shortly before trial and ordinarily results in a pretrial order. — Often shortened to *pretrial*. — Also termed *pretrial hearing*.

**pretrial detention.** See DETENTION.

**pretrial discovery.** See DISCOVERY.

**pretrial diversion.** See DIVERSION PROGRAM.

**pretrial hearing.** See PRETRIAL CONFERENCE.

**pretrial intervention.** **1.** DIVERSION PROGRAM. **2.** See *deferred judgment* under JUDGMENT.

**pretrial investigation.** *Military law.* An investigation to decide whether a case should be recommended for forwarding to a general court-martial.

**pretrial order.** A court order setting out the claims and defenses to be tried, the stipulations of the parties, and the case's procedural rules, as agreed to by the parties or mandated by the court at a pretrial conference.

**prevail**, *vb.* **1.** To obtain the relief sought in an action; to win a lawsuit <the plaintiff prevailed in the Supreme Court>. **2.** To be commonly accepted or predominant <it's unclear which line of precedent will prevail>.

**prevailing party.** See PARTY (2).

**prevarication** (pri-var-ə-kay-shən), *n.* The act or an instance of lying or avoiding the truth; equivocation. — **prevaricate** (pri-var-ə-kayt), *vb.*

**prevaricator** (pri-var-ə-kay-tər). [Latin] **1.** A liar; an equivocator. **2.** *Roman law.* One who betrays another's trust, such as an advocate who aids the opposing party by betraying the client. — Also spelled (in sense 2) *praevaricator*.

**prevent**, *vb.* To hinder or impede <a gag order to prevent further leaks to the press>.

**preventative custody.** See CUSTODY (1).

**prevention.** *Civil law.* The right of one of several judges having concurrent jurisdiction to exercise that jurisdiction over a case that the judge is first to hear.

**prevention doctrine.** *Contracts.* The principle that each contracting party has an implied duty to not do anything that prevents the other party from performing its obligation. — Also termed *prevention-of-performance doctrine*.

**preventive custody.** See CUSTODY (1).

**preventive detention.** See DETENTION.

**preventive injunction.** See INJUNCTION.

**preventive punishment.** See PUNISHMENT.

**previously taxed income.** See INCOME.

**price.** The amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold.

**agreed price.** The price for a sale, esp. of goods, arrived at by mutual agreement. Cf. *open price*.

**asked price.** The lowest price at which a seller is willing to sell a security at a given time. See SPREAD (2).

**asking price.** The price at which a seller lists property for sale, often implying a willingness to sell for less. — Also termed *ask price*; *offering price*.

**at-the-market price.** A retail price that store owners in the same vicinity generally charge.

**bid price.** The highest price that a prospective buyer is willing to pay for a security at a given time. See SPREAD (2).

**call price.** **1.** The price at which a bond may be retired before its maturity. **2.** See *strike price*.

**ceiling price.** **1.** The highest price at which a buyer is willing to buy. **2.** The highest price allowed by a government agency or by some other regulatory institution.

**closing price.** The price of a security at the end of a given trading day. — Also termed *close*.

**exercise price.** See *strike price*.

**ex-works price.** The price of goods as they leave the factory. See EX WORKS.

**fixed price.** A price that is agreed upon by a wholesaler and a retailer for the later sale or resale of an item. • Agreements to fix prices are generally prohibited by state and federal statutes.

**floor price.** The lowest price at which a seller is willing to sell.

**liquidation price.** A price that is paid for property sold to liquidate a debt. • Liquidation price is usu. below market price. — Also termed *liquidation value*.

**list price.** A published or advertised price of goods; retail price.

**market price.** The prevailing price at which something is sold in a specific market. See *fair market value* under VALUE.

**mean trading price.** *Securities.* The average of the daily trading price of a security determined at the close of the market each day during a 90-day period.

**net price.** The price of something, after deducting cash discounts.

**offering price.** See *asking price*.

**open price.** The price for a sale, esp. of goods, that has not been settled at the time of a sale's conclusion. UCC § 2-305. Cf. *agreed price*.

**put price.** See *strike price*.

**redemption price.** **1.** The price of a bond that has not reached maturity, purchased at the issuer's option. **2.** The price of shares when a mutual-fund shareholder sells shares back to the fund. — Also termed *liquidating price*; *repurchase price*.

**reserve price.** The price announced at an auction as the lowest that will be entertained. See WITH RESERVE; WITHOUT RESERVE.

**sales price.** The total amount for which property is sold, often including the costs of any services that are a part of the sale. • Under sales-tax statutes, the amount is typically valued in money even if the value is not received in money. — Also termed *selling price*.

**spot price.** The amount for which a commodity is sold in a spot market. See SPOT TRADING.

**strike price.** *Securities.* The price for which a security will be bought or sold under an

option contract if the option is exercised. — Also termed *striking price*; *exercise price*; *call price*; *put price*. See OPTION.

**subscription price.** See SUBSCRIPTION PRICE.

**suggested retail price.** The sales price recommended to a retailer by a manufacturer of the product.

**support price.** A minimum price set by the federal government for a particular agricultural commodity.

**target price.** A price set by the federal government for particular agricultural commodities. • If the market price falls below the target price, farmers receive a subsidy from the government for the difference.

**transfer price.** The charge assigned to an exchange of goods or services between a corporation's organizational units.

**unit price.** A price of a food product expressed in a well-known measure such as ounces or pounds.

**upset price.** The lowest amount that a seller is willing to accept for property or goods sold at auction.

**wholesale price.** The price that a retailer pays for goods purchased (usu. in bulk) from a wholesaler for resale to consumers at a higher price.

**price amendment.** *Securities.* A change in a registration statement, prospectus, or prospectus supplement affecting the offering price, the underwriting and selling discounts or commissions, the amount of proceeds, the conversion rates, the call prices, or some other matter relating to the offering price.

**price/cost analysis.** A technique of determining, for antitrust purposes, whether predatory pricing has occurred by examining the relationship between a defendant's prices and either its average variable cost or its average total cost.

**price discrimination.** The practice of offering identical or similar goods to different buyers at different prices when the costs of producing the goods are the same. • Price discrimination can violate antitrust laws if it reduces competition. It may be either direct, as when a seller charges different prices to different buyers, or indirect, as when a seller offers special concessions (such as favorable credit terms) to some but not all buyers.

**persistent price discrimination.** A monopolist's systematic policy of obtaining different rates of return from different sales groupings.

**price-earnings ratio.** The ratio between a stock's current share price and the corporation's earnings per share for the last year. • Some investors avoid stocks with high price-earnings ratios because those stocks may be overpriced. — Abbr. P/E ratio. Cf. *earnings yield* under YIELD.

**price expectancy.** See EXHIBITION VALUE.

**price-fixing.** The artificial setting or maintenance of prices at a certain level, contrary to the workings of the free market. • Price-fixing is usu. illegal per se under antitrust law.

"Price-fixing agreements may or may not be aimed at complete elimination of price competition. The group making those agreements may or may not have the power to control the market. But the fact that the group cannot control the market prices does not necessarily mean that the agreement as to prices has no utility to the members of the combination. The effectiveness of price-fixing agreements is dependent on many factors, such as competitive tactics, position in the industry, the formula underlying price policies. Whatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 225-26 n.59, 60 S.Ct. 811, 845 n.59 (1940).

**horizontal price-fixing.** Price-fixing among competitors on the same level, such as retailers throughout an industry.

**vertical price-fixing.** Price-fixing among parties in the same chain of distribution, such as manufacturers and retailers attempting to control an item's resale price.

**price index.** An index of average prices as a percentage of the average prevailing at some other time (such as a base year). See CONSUMER PRICE INDEX; PRODUCER PRICE INDEX.

**price leadership.** A market condition in which an industry leader establishes a price that others in the field adopt as their own. • Price leadership alone does not violate antitrust laws without other evidence of an intent to create a monopoly.

**price-level-adjusted mortgage.** See MORTGAGE.

**price memorandum.** *Securities.* A document created by an underwriter to explain how securities are priced for a public offering and, typically, to show estimates and appraisals that are not allowed as part of the offering documents.

**price support.** The artificial maintenance of prices (as of a particular commodity) at a certain level, esp. by governmental action (as by subsidy).

**price war.** A period of sustained or repeated price-cutting in an industry (esp. among retailers), designed to undersell competitors or force them out of business.

**priest-penitent privilege.** See PRIVILEGE (3).

**primae impressionis** (pri-mee im-pres[h]-ee-oh-nis). [Law Latin] Of the first impression. See *case of first impression* under CASE.

**primae preces.** See PRECES PRIMARIAE.

**prima facie** (pri-mə fay-shə or fay-shee), *adv.* [Latin] At first sight; on first appearance but subject to further evidence or information <the deed is prima facie valid>.

**prima facie**, *adj.* Sufficient to establish a fact or raise a presumption unless disproved or rebutted <a prima facie showing>.

**prima facie case.** **1.** The establishment of a legally required rebuttable presumption. **2.** A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

**prima facie evidence.** See EVIDENCE.

**prima facie presumption.** See *rebuttable presumption* under PRESUMPTION.

**prima facie privilege.** See *qualified immunity* under IMMUNITY (1).

**prima facie tort.** See TORT.

**primage** (pri-mij). See HAT MONEY.

**primary**, *n.* See *primary election* under ELECTION.

**primary activity.** *Labor law.* Concerted action (such as a strike or picketing) directed against an employer with which a union has a dispute. Cf. SECONDARY ACTIVITY.

**primary allegation.** See ALLEGATION.

**primary authority.** See AUTHORITY (4).

**primary beneficiary.** See BENEFICIARY.

**primary boycott.** See BOYCOTT.

**primary cause.** See *proximate cause* under CAUSE (1).

**primary committee.** *Bankruptcy.* A group of creditors organized to help the debtor draw up a reorganization plan.

**primary conveyance.** See CONVEYANCE.

**primary election.** See ELECTION.

**primary evidence.** See *best evidence* under EVIDENCE.

**primary fact.** See FACT.

**primary insurance.** See INSURANCE.

**primary-jurisdiction doctrine.** A judicial doctrine whereby a court tends to favor allowing an agency an initial opportunity to decide an issue in a case in which the court and the agency have concurrent jurisdiction.

**primary lease.** See HEADLEASE.

**primary liability.** See LIABILITY.

**primary-line competition.** See *horizontal competition* under COMPETITION.

**primary-line injury.** *Antitrust.* Under the price-discrimination provisions of the Robinson-Patman Act, the practice of charging below-cost, predatory prices in an attempt to eliminate the seller's competition in the market. 15 USCA § 13(a). ● A primary-line injury, which hinders or seeks to hinder competition among the seller's competitors, is distinguishable from a secondary-line injury, which refers to discriminatory pricing that hinders or seeks to hinder competition among the seller's customers, by favoring one customer over another in the prices the seller charges. Cf. SECONDARY-LINE INJURY.

"Liggett contends that Brown & Williamson's discriminatory volume rebates to wholesalers threatened substantial competitive injury by furthering a predatory pricing scheme designed to purge competition from the economy segment of the cigarette market. This type of injury, which harms direct competitors of the discriminating seller, is known as a primary-line injury." *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 220, 113 S.Ct. 2578, 2586 (1993).

**primary market.** See MARKET.

**primary mortgage market.** See MORTGAGE MARKET.

**primary obligation.** See OBLIGATION.

**primary offering.** See OFFERING.

**primary plea.** See *primary allegation* under ALLEGATION.

**primary powers.** The chief powers given by a principal to an agent to accomplish the agent's tasks. Cf. *MEDIATE POWERS*.

**primary reserve ratio.** See RESERVE RATIO.

**primary right.** See RIGHT.

**primate** (**pri**-mit). A chief ecclesiastic; an archbishop or bishop having jurisdiction over other bishops within a province.

**prime, n.** See *prime rate* under INTEREST RATE.

**prime, vb.** To take priority over <Watson's preferred mortgage primed Moriarty's lien>.

**prime contractor.** See *general contractor* under CONTRACTOR.

**prime cost.** See COST (1).

**prime lending rate.** See *prime rate* under INTEREST RATE.

**prime maker.** See MAKER.

**prime minister.** (*often cap.*) The chief executive of a parliamentary government; the head of a cabinet. — Abbr. PM.

**primer** (**prim**-ər or **pri**-mər). [Law French] First; primary <primer seisin>.

**prime rate.** See INTEREST RATE.

**primer election.** A first choice; esp., the eldest coparcener's pick of land on division of the estate. See ELECTION.

**primer fine** (**prim**-ər or **pri**-mər **fin**). [Latin] *Hist.* A fee payable to the Crown on the suing out of a writ of praecipe to begin a conveyance by fine. See FINE (1). — Also termed *praefine*.

**primer seisin.** See SEISIN.

**prime serjeant.** See *priemier serjeant* under SERJEANT-AT-LAW.

**prime tenant.** See TENANT.

**primitiae** (**pri**-mish-ee-ee). [fr. Latin *primus* "first"] See FIRST FRUITS. — **primitial** (**pri**-mish-əl), *adj.*

**primogeniture** (**pri**-mə-jen-ə-chər). **1.** The state of being the firstborn child among siblings. **2.** The common-law right of the firstborn son to inherit his ancestor's estate, usu. to the exclusion of his younger siblings. — Also termed (in sense **2**) *primogenitureship*. See BOROUGH ENGLISH.

"We might note here, parenthetically, that the English preference for single-file male descent — that is, the system of descent known as *primogeniture* — was never cordially received in this country. Our statutes of descent and distribution uniformly provide for sons' and daughters' sharing the inheritance equally. Although this seems a fairer method than primogeniture, which was finally abolished in Britain with the 1925 reforms, the descent of property to an ever-expanding group of heirs can seriously complicate the clearing of old titles." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 9 (2d ed. 1984).

**primo venienti** (**pri**-moh ven-ee-en-ti). [Latin] To the one first coming. ● This refers to the former practice by estate executors of paying debts as they were presented without regard to whether the estate had enough assets to pay all the debts.

**primum decretum** (**pri**-məm di-kree-təm). [Latin "first decree"] **1.** *Hist. Eccles. law.* A preliminary decree granted in favor of the plaintiff on the nonappearance of a defendant. **2.** *Maritime law.* A provisional decree.

**princeps** (**prin**-seps). [Latin] *Roman law.* A leading person, esp. the emperor.

**principal, adj.** Chief; primary; most important.

**principal, n. 1.** One who authorizes another to act on his or her behalf as an agent. Cf. AGENT (1).

**disclosed principal.** A principal whose identity is revealed by the agent to a third party. ● A disclosed principal is always liable on a contract entered into by the agent with the principal's authority, but the agent is usu. not liable.

**partially disclosed principal.** A principal whose existence — but not actual identity — is revealed by the agent to a third party.

**undisclosed principal.** A principal whose identity is kept secret by the agent. • An undisclosed principal and the agent are both liable on a contract entered into by the agent with the principal's authority.

**2.** One who commits or participates in a crime. Cf. ACCESSORY (2); ACCOMPLICE (2).

“The student should notice that in criminal law the word ‘principal’ suggests the very converse of the idea which it represents in mercantile law. In the former, as we have seen, an accessory proposes an act, and the ‘principal’ carries it out. But in the law of contract, and in that of tort, the ‘principal’ only authorizes an act, and the ‘agent’ carries it out. Where the same transaction is both a tort and a crime, this double use of the word may cause confusion. For example, if, by an innkeeper's directions, his chamber-maid steals jewels out of a guest's portmanteau, the maid is the ‘principal’ in a *crime*, wherein her master is an accessory before the fact; whilst she is also the agent in a *tort*, wherein her master is the ‘principal’.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 89 (16th ed. 1952).

**principal in the first degree.** The perpetrator of a crime.

“By a principal in the first degree, we mean the actual offender — the man in whose guilty mind lay the latest blamable mental cause of the criminal act. Almost always, of course, he will be the man by whom this act itself was done. But occasionally this will not be so; for the felony may have been committed by the hand of an innocent agent who, having no blamable intentions in what he did, incurred no criminal liability by doing it. In such a case the man who instigates this agent is the real offender; his was the last *mens rea* that preceded the crime, though it did not cause it immediately but mediate.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 85–86 (16th ed. 1952).

**principal in the second degree.** One who helped the perpetrator at the time of the crime. — Also termed *accessory at the fact*. See ABETTOR.

“The distinction between principals in the first and second degrees is a distinction without a difference except in those rare instances in which some unusual statute has provided a different penalty for one of these than for the other. A principal in the first degree is the immediate perpetrator of the crime while a principal in the second degree is one who did not commit the crime with his own hands but was present and abetting the principal. It may be added, in the words of Mr. Justice Miller, that one may perpetrate a crime, not only with his own hands, but ‘through the agency of mechanical or chemical means, as by instruments, poison or powder, or by an animal, child, or other innocent agent’ acting under his direction.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 736 (3d ed. 1982) (quoting *Beausoliel v. United States*, 107 F.2d 292, 297 (D.C. Cir. 1939)).

**3.** One who has primary responsibility on an obligation, as opposed to a surety or indorser.

**4.** The corpus of an estate or trust. **5.** The amount of a debt, investment, or other fund, not including interest, earnings, or profits.

**principal action.** See *main demand* under DEMAND (1).

**principal contract.** See CONTRACT.

**principal covenant.** See COVENANT (1).

**principal creditor.** See CREDITOR.

**principal demand.** See *main demand* under DEMAND (1).

**principal fact.** See FACT.

**principal in the first degree.** See PRINCIPAL (2).

**principal in the second degree.** See PRINCIPAL (2).

**principalis** (prin-sə-pay-lis), *adj.* [Latin] Principal, as in *principalis debtor* (“principal debtor”).

**principal place of business.** The place of a corporation's chief executive offices, which is typically viewed as the “nerve center.”

**principal right.** See RIGHT.

**principle, n.** A basic rule, law, or doctrine.

**principle of finality.** See FINALITY DOCTRINE.

**principle of legality.** See LEGALITY (2).

**principle of nonintervention.** See NONINTERVENTION.

**principle of retribution.** See LEX TALIONIS.

**print, n.** See FINGERPRINT.

**Printers Ink Statute.** A model statute drafted in 1911 and adopted in a number of states making it a misdemeanor to print an advertisement that contains a false or deceptive statement.

**prior**, *adj.* **1.** Preceding in time or order <under this court's prior order>. **2.** Taking precedence <a prior lien>.

**prior**, *n.* *Criminal law. Slang.* A previous conviction <because the defendant had two priors, the judge automatically enhanced his sentence>.

**prior-appropriation doctrine.** The rule that, among the persons whose properties border on a waterway, the earliest users of the water have the right to take all they can use before anyone else has a right to it. Cf. RIPARIAN-RIGHTS DOCTRINE.

**prior art.** See ART.

**prior-claim rule.** The principle that before suing for a tax refund or abatement, a taxpayer must first assert the claim to the Internal Revenue Service.

**prior consistent statement.** A witness's earlier statement that is consistent with the witness's trial testimony. • A prior consistent statement is not hearsay if it is offered to rebut a charge that the testimony was improperly influenced or fabricated. Fed. R. Evid. 801(d)(1)(B).

**prior creditor.** See CREDITOR.

**prior inconsistent statement.** A witness's earlier statement that conflicts with the witness's testimony at trial. • In federal practice, extrinsic evidence of an unsworn prior inconsistent statement is admissible — if the witness is given an opportunity to explain or deny the statement — for impeachment purposes only. Fed. R. Evid. 613(b), 801(d)(1)(A).

**priori petenti** (pri-or-i pə-ten-ti). [Latin "to the first person applying"] *Wills & estates.* The principle that when two or more persons are equally entitled to administer an estate, the court will appoint the person who applies first.

**priority.** **1.** The status of being earlier in time or higher in degree or rank; precedence. **2.** An established right to such precedence; esp., a creditor's right to have a claim paid before other creditors of the same debtor receive payment. **3.** The doctrine that, as between two courts, jurisdiction should be accorded the court in which proceedings are first begun.

**priority claim.** See CLAIM (5).

**priority-jurisdiction rule.** See FIRST-TO-FILE RULE.

**priority lien.** See *prior lien* under LIEN.

**priority of invention.** The determination that one among several patent applications, for substantially the same invention, should receive the patent when the Patent and Trademark Office has declared interference. • This determination depends on the date of conception, the date of reduction to practice, and diligence.

**priority of liens.** The ranking of liens in the order in which they are perfected.

**prior lien.** See LIEN.

**prior petens** (pri-ər pet-enz). [Latin] The person first applying.

**prior preferred stock.** See STOCK.

**prior restraint.** A governmental restriction on speech or publication before its actual expression. • Prior restraints violate the First Amendment unless the speech is obscene, is defamatory, or creates a clear and present danger to society.

"The legal doctrine of prior restraint (or formal censorship before publication) is probably the oldest form of press control. Certainly it is one of the most efficient, since one censor, working in the watershed, can create a drought of information and ideas long before they reach the fertile plain of people's minds. In the United States, the doctrine of prior restraint has been firmly opposed by the First Amendment to the Constitution, and by the Supreme Court, perhaps most notably in the case of *Near v. Minnesota*, decided in 1931. But the philosophy behind that doctrine lives zestfully on, and shows no signs of infirmities of age." David G. Clark & Earl R. Hutchinson, *Mass Media and the Law* 11 (1970).

**prior-use bar.** See PUBLIC-USE BAR.

**prior-use doctrine.** The principle that, without legislative authorization, a government agency may not appropriate property already devoted to a public use.

**prisage** (pri-zij). *Hist.* A royal duty on wine imported into England. • Prisage was replaced by butlerage in the reign of Edward I. Cf. BUTLERAGE.

**prisel en auter lieu** (pri-zəl awn oh-tayl-yoo). [Law French "a taking in another place"] A plea in abatement in a replevin action.



**prison.** A state or federal facility of confinement for convicted criminals, esp. felons. — Also termed *penitentiary*; *penal institution*; *adult correctional institution*. Cf. JAIL.

**prison breach.** A prisoner's forcible breaking and departure from a place of lawful confinement; the offense of escaping from confinement in a prison or jail. • *Prison breach* has traditionally been distinguished from *escape* by the presence of force; this distinction has been abandoned in some jurisdictions. — Also termed *prison breaking*. Cf. ESCAPE (2).

"Breach of prison by the offender himself, when committed for any cause, was felony at the common law: or even conspiring to break it. But this severity is mitigated by the statute *de frangentibus prisonam*, 1 Edw. II, which enacts that no person shall have judgment of life or member, for breaking prison, unless committed for some capital offence. So that to break prison, when lawfully committed for any treason or felony, remains still a felony as at the common law; and to break prison, when lawfully confined upon any other inferior charge, is still punishable as a high misdemeanor by fine and imprisonment." 4 William Blackstone, *Commentaries on the Laws of England* 130-31 (1769).

**prison camp.** A usu. minimum-security camp for the detention of trustworthy prisoners who are often employed on government projects.

**prisoner.** 1. A person who is serving time in prison. 2. A person who has been apprehended by a law-enforcement officer and is in custody, regardless of whether the person has yet been put in prison.

"While breach of prison, or prison breach, means breaking out of or away from prison, it is important to have clearly in mind the meaning of the word 'prison.' If an officer arrests an offender and takes him to jail the layman does not think of the offender as being 'in prison' until he is safely behind locked doors, but no one hesitates to speak of him as a 'prisoner' from the moment of apprehension. He is a prisoner because he is 'in prison . . . whether he were actually in the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him. . . .'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 566 (3d ed. 1982) (quoting 2 Hark. P.C. ch. 18, § 1 (6th ed. 1788)).

**prisoner at the bar.** An accused person who is on trial.

**prisoner of conscience.** *Int'l law.* A person who, not having used or advocated the use of violence, has been imprisoned by reason of a political, religious, or other conscientiously held belief or by reason of ethnic origin, sex, color, or language.

**prisoner's dilemma.** A logic problem — often used by law-and-economics scholars to illustrate the effect of cooperative behavior — involving two prisoners who are being separately questioned about their participation in a crime: (1) if both confess, they will each receive a 5-year sentence; (2) if neither confesses, they will each receive a 3-year sentence; and (3) if one confesses but the other does not, the confessing prisoner will receive a 1-year sentence while the silent prisoner will receive a 10-year sentence. See EXTERNALITY.

**prist** (prist). [Law French] *Hist.* Ready. • In oral pleading, this term was used to express a joinder of issue.

**privacy, invasion of.** See INVASION OF PRIVACY.

**privacy, right of.** See RIGHT OF PRIVACY.

**privacy law.** A federal or state statute that protects a person's right to be left alone or restricts public access to personal information such as tax returns and medical records. — Also termed *privacy act*.

**private, adj.** 1. Relating or belonging to an individual, as opposed to the public or the government. 2. (Of a company) not having shares that are freely available on an open market. 3. Confidential; secret.

**private agent.** See AGENT.

**private annuity.** See ANNUITY.

**private attorney.** See ATTORNEY (1).

**private-attorney-general doctrine.** The equitable principle that allows the recovery of attorney's fees to a party who brings a lawsuit that benefits a significant number of people, requires private enforcement, and is important to society as a whole.

**private bank.** See BANK.

**private bill.** See BILL (3).

**private boundary.** See BOUNDARY.

**private carrier.** See CARRIER.

**private corporation.** See CORPORATION.

**private delict.** See DELICT.

**private easement.** See EASEMENT.

**privateer** (pri-və-teer), *n.* **1.** A vessel owned and operated by private persons, but authorized by a nation on certain conditions to damage the commerce of the enemy by acts of piracy. **2.** A sailor on such a vessel.

**privateering**, *n.* *Int'l law.* The practice of arming privately owned merchant ships for the purpose of attacking enemy trading ships. ● Before the practice was outlawed, governments commissioned privateers by issuing letters of marque to their merchant fleets. Privateering was prohibited by the Declaration of Paris Concerning Naval Warfare of 1856, which has been observed by nearly all nations since that time. — **privateer**, *vb.*

**private fact.** See FACT.

**private foundation.** See FOUNDATION.

**private international law.** See INTERNATIONAL LAW.

**private judging.** A type of alternative dispute resolution whereby the parties hire a private individual to hear and decide a case. ● This process may occur as a matter of contract between the parties or in connection with a statute authorizing such a process. — Also termed *rent-a-judging*.

**private land grant.** See LAND GRANT.

**private law.** **1.** The body of law dealing with private persons and their property and relationships. Cf. PUBLIC LAW (1). **2.** SPECIAL LAW.

**private letter ruling.** See LETTER RULING.

**private morality.** See MORALITY.

**private mortgage insurance.** See *mortgage insurance* under INSURANCE.

**private necessity.** See NECESSITY.

**private nuisance.** See NUISANCE.

**private offering.** See OFFERING.

**private person.** See PERSON.

**private placement.** **1.** The placement of a child for adoption by a parent, lawyer, doctor, or

private agency, but not by a government agency. — Also termed *direct placement*. **2.** See *private offering* under OFFERING.

**private power.** See POWER.

**private property.** See PROPERTY.

**private prosecutor.** See PROSECUTOR (2).

**private publication.** See *limited publication* under PUBLICATION.

**private reprimand.** See REPRIMAND.

**private right.** See RIGHT.

**private sale.** See SALE.

**private school.** See SCHOOL.

**private seal.** See SEAL.

**private search.** See SEARCH.

**private sector.** The part of the economy or an industry that is free from direct governmental control. Cf. PUBLIC SECTOR.

**private servitude.** See SERVITUDE (1).

**private signature.** See SIGNATURE.

**private statute.** See *special statute* under STATUTE.

**private stream.** See STREAM.

**private trust.** See TRUST.

**private war.** See WAR.

**private water.** See WATER.

**private way.** See WAY.

**private wharf.** See WHARF.

**private wrong.** See WRONG.

**privation** (pri-vay-shən). **1.** The act of taking away or withdrawing. **2.** The condition of being deprived.

**privatization** (pri-və-tə-zay-shən), *n.* The act or process of converting a business or industry

from governmental ownership or control to private enterprise. — **privatize**, *vb.*

**privatum** (pri-vay-təm). [Latin] Private. • This term appeared in phrases such as *jus privatum* (“private law”).

**privies** (priv-eez). See PRIVY.

**privigna** (pri-vig-nə), *n.* [Latin] *Roman & civil law.* A daughter of one’s husband or wife by a previous marriage; a stepdaughter.

**privignus** (pri-vig-nəs). [Latin] *Roman & civil law.* A son of one’s husband or wife by a previous marriage; a stepson.

**privilege**. **1.** A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty.

**absolute privilege.** A privilege that immunizes an actor from suit, no matter how wrongful the action might be, and even though it is done with an improper motive. Cf. *qualified privilege*.

**conditional privilege.** See *qualified privilege*.

**deliberative-process privilege.** A privilege permitting the government to withhold documents relating to policy formulation to encourage open and independent discussion among those who develop government policy.

**litigation privilege.** A privilege protecting the attorneys and parties in a lawsuit from defamation claims arising from statements made in the course of the suit.

**parliamentary privilege.** The right of a particular question, motion, or statement to take precedence over all other business before the legislative body.

**privilege from arrest.** An exemption from arrest, as that enjoyed by members of Congress during legislative sessions. U.S. Const. art. I, § 6.

**qualified privilege.** A privilege that immunizes an actor from suit only when the privilege is properly exercised in the performance of a legal or moral duty. — Also termed *conditional privilege*. Cf. *absolute privilege*.

“Qualified privilege . . . is an intermediate case between total absence of privilege and the presence of absolute privilege.” R.F.V. Heuston, *Salmond on the Law of Torts* 165 (17th ed. 1977).

**special privilege.** A privilege granted to a person or class of persons to the exclusion of

others and in derogation of the common right.

**testimonial privilege.** A right not to testify based on a claim of privilege; a privilege that overrides a witness’s duty to disclose matters within the witness’s knowledge, whether at trial or by deposition.

**viatorial privilege** (vi-ə-tor-ee-əl). A privilege that overrides a person’s duty to attend court in person and to testify.

**work-product privilege.** See WORK-PRODUCT RULE.

**2.** An affirmative defense by which a defendant acknowledges at least part of the conduct complained of but asserts that the defendant’s conduct was authorized or sanctioned by law; esp., in tort law, a circumstance justifying or excusing an intentional tort. See JUSTIFICATION (2). Cf. IMMUNITY (2). **3.** An evidentiary rule that gives a witness the option to not disclose the fact asked for, even though it might be relevant; the right to prevent disclosure of certain information in court, esp. when the information was originally communicated in a professional or confidential relationship.

**accountant-client privilege.** The protection afforded to a client from an accountant’s unauthorized disclosure of materials submitted to or prepared by the accountant.

**antimarital-facts privilege.** See *marital privilege* (2).

**attorney-client privilege.** The client’s right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney. — Also termed *lawyer-client privilege*; *client’s privilege*.

“There are a number of ways to organize the essential elements of the attorney-client privilege to provide for an orderly analysis. One of the most popular is Wigmore’s schema: ‘(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the privilege be waived.’ Though this organization has its virtues, there is some question as to whether it completely states the modern privilege.” 24 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5473, at 103–04 (1986) (quoting 8 John Henry Wigmore, *Evidence* § 2292, at 554 (John T. McNaughton rev., 1961)).

“At the present time it seems most realistic to portray the attorney-client privilege as supported in part by its traditional utilitarian justification, and in part by the integral role it is perceived to play in the adversary system itself. Our system of litigation casts the lawyer in the role of fighter for the party whom he represents. A strong tradition of loyalty attaches to the relationship of

attorney and client, and this tradition would be outraged by routine examination of the lawyer as to the client's confidential disclosures regarding professional business. To the extent that the evidentiary privilege, then, is integrally related to an entire code of professional conduct, it is futile to envision drastic curtailment of the privilege without substantial modification of the underlying ethical system to which the privilege is merely ancillary." John W. Strong, *McCormick on Evidence* § 87, at 121-22 (4th ed. 1992).

**clergyman-penitent privilege.** See *priest-penitent privilege*.

**doctor-patient privilege.** The right to exclude from evidence in a legal proceeding any confidential communication that a patient makes to a physician for the purpose of diagnosis or treatment, unless the patient consents to the disclosure. — Also termed *physician-client privilege*; *patient-physician privilege*.

**editorial privilege.** See *journalist's privilege* (2).

**executive privilege.** A privilege, based on the constitutional doctrine of separation of powers, that exempts the executive branch of the federal government from usual disclosure requirements when the matter to be disclosed involves national security or foreign policy. Cf. *executive immunity* under IMMUNITY (1).

**husband-wife privilege.** See *marital privilege*.

**informant's privilege.** The qualified privilege that a government can invoke to prevent disclosure of the identity and communications of its informants. • In exercising its power to formulate evidentiary rules for federal criminal cases, the U.S. Supreme Court has consistently declined to hold that the government must disclose the identity of informants in a preliminary hearing or in a criminal trial. *McCray v. Illinois*, 386 U.S. 300, 312, 87 S.Ct. 1056, 1063 (1967). A party can usu. overcome the privilege if it can demonstrate that the need for the information outweighs the public interest in maintaining the privilege. — Also termed *informer's privilege*.

**joint-defense privilege.** The rule that a defendant can assert the attorney-client privilege to protect a confidential communication made to a codefendant's lawyer if the communication was related to the defense of both defendants. — Also termed *common-interest doctrine*.

**journalist's privilege.** 1. A reporter's protection, under constitutional or statutory law, from being compelled to testify about confidential information or sources. — Also termed *reporter's privilege*; *newsman's privi-*

*lege*. See SHIELD LAW (1). 2. A publisher's protection against defamation lawsuits when the publication makes fair comment on the actions of public officials in matters of public concern. — Also termed *editorial privilege*. See FAIR COMMENT.

**judicial privilege.** *Defamation.* The privilege protecting any statement made in the course of and with reference to a judicial proceeding by any judge, juror, party, witness, or advocate.

**legislative privilege.** *Defamation.* The privilege protecting (1) any statement made in a legislature by one of its members, and (2) any paper published as part of legislative business. — Also termed (in a parliamentary system) *parliamentary privilege*.

**marital privilege.** 1. The privilege allowing a spouse not to testify, and to prevent another from testifying, about confidential communications with the other spouse during the marriage. — Also termed *marital-communications privilege*. 2. The privilege allowing a spouse not to testify in a criminal case as an adverse witness against the other spouse, regardless of the subject matter of the testimony. — Also termed (in sense 2) *privilege against adverse spousal testimony*; *antimarital-facts privilege*. 3. The privilege immunizing from a defamation lawsuit any statement made between husband and wife. — Also termed (in all senses) *spousal privilege*; *husband-wife privilege*.

**national-security privilege.** See *state-secrets privilege*.

**newsman's privilege.** See *journalist's privilege* (1).

**official privilege.** The privilege immunizing from a defamation lawsuit any statement made by one state officer to another in the course of official duty.

**parliamentary privilege.** See *legislative privilege*.

**patient-physician privilege.** See *doctor-patient privilege*.

**peer-review privilege.** A privilege that protects from disclosure the proceedings and reports of a medical facility's peer-review committee, which reviews and oversees the patient care and medical services provided by the staff.

**physician-client privilege.** See *doctor-patient privilege*.

**priest-penitent privilege.** The privilege barring a clergy member from testifying about a

confessor's communications. — Also termed *clergyman-penitent privilege*.

**privilege against adverse spousal testimony.** See *marital privilege* (2).

**psychotherapist-patient privilege.** A privilege that a person can invoke to prevent the disclosure of a confidential communication made in the course of diagnosis or treatment of a mental or emotional condition by or at the direction of a psychotherapist. • The privilege can be overcome under certain conditions, as when the examination is ordered by a court. — Also termed *psychotherapist-client privilege*.

**reporter's privilege.** See *journalist's privilege* (1).

**self-critical-analysis privilege.** A privilege protecting individuals and entities from divulging the results of candid assessments of their compliance with laws and regulations, to the extent that the assessments are internal, the results were intended from the outset to be confidential, and the information is of a type that would be curtailed if it were forced to be disclosed. • This privilege is founded on the public policy that it is beneficial to permit individuals and entities to confidentially evaluate their compliance with the law, so that they will monitor and improve their compliance with it. — Also termed *self-policing privilege*.

**spousal privilege.** See *marital privilege*.

**state-secrets privilege.** A privilege that the government may invoke against the discovery of a material that, if divulged, could compromise national security. — Also termed *national-security privilege*.

4. *Civil law.* A creditor's right, arising from the nature of the debt, to priority over the debtor's other creditors. 5. HAT MONEY.

**privilege against self-incrimination.** See RIGHT AGAINST SELF-INCRIMINATION.

**privileged, adj.** Not subject to the usual rules or liabilities; esp., not subject to disclosure during the course of a lawsuit <a privileged document>.

**privileged communication.** See COMMUNICATION.

**privileged debt.** See DEBT.

**privileged evidence.** See EVIDENCE.

**privileged subscription.** See RIGHTS OFFERING.

**privileged villeinage.** See VILLEINAGE.

**privilege from arrest.** See PRIVILEGE (1).

**Privileges and Immunities Clause.** The constitutional provision (U.S. Const. art. IV, § 2, cl. 1) prohibiting a state from favoring its own citizens by discriminating against other states' citizens who come within its borders.

**Privileges or Immunities Clause.** The constitutional provision (U.S. Const. amend. XIV, § 1) prohibiting state laws that abridge the privileges or immunities of U.S. citizens. • The clause was effectively nullified by the Supreme Court in the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873). Cf. DUE PROCESS CLAUSE; EQUAL PROTECTION CLAUSE.

**privilege tax.** See TAX.

**privilegium** (priv-ə-lee-jee-əm). [Latin] 1. *Roman law.* A law passed against or in favor of a specific individual. 2. *Roman law.* A special right, esp. one giving priority to a creditor. 3. *Civil law.* Every right or favor that is granted by the law but is contrary to the usual rule.

**privilegium clericale** (priv-ə-lee-jee-əm kler-ə-kay-lee). [Law Latin] See BENEFIT OF CLERGY.

**privity** (priv-ə-tee). 1. The connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest <privity of contract>.

**horizontal privity.** *Commercial law.* The legal relationship between a party and a non-party who is related to the party (such as a buyer and a member of the buyer's family).

**privity of blood.** 1. Privity between an heir and an ancestor. 2. Privity between coparceners.

**privity of contract.** The relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. • The requirement of privity has been relaxed under modern laws and doctrines of implied warranty and strict liability, which allow a third-party beneficiary or other foreseeable user to sue the seller of a defective product.

“To many students and practitioners of the common law *privity of contract* became a fetish. As such, it operated to

deprive many a claimant of a remedy in cases where according to the *mores* of the time the claim was just. It has made many learned men believe that a *chose in action* could not be assigned. Even now, it is gravely asserted that a man cannot be made the debtor of another against his will. But the common law was gradually influenced by equity and by the law merchant, so that by assignment a debtor could become bound to pay a perfect stranger to himself, although until the legislature stepped in, the common-law courts characteristically made use of a fiction and pretended that they were not doing that which they really were doing." William R. Anson, *Principles of the Law of Contract* 335 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"It is an elementary principle of English law — known as the doctrine of 'Privity of Contract' — that contractual rights and duties only affect the parties to a contract, and this principle is the distinguishing feature between the law of contract and the law of property. True proprietary rights are 'binding on the world' in the lawyer's traditional phrase. Contractual rights, on the other hand, are only binding on, and enforceable by, the immediate parties to the contract. But this distinction, fundamental though it be, wears a little thin at times. On the one hand, there has been a constant tendency for contractual rights to be extended in their scope so as to affect more and more persons who cannot be regarded as parties to the transaction. On the other hand, few proprietary rights are literally 'binding on the world'." P.S. Atiyah, *An Introduction to the Law of Contract* 265 (3d ed. 1981).

"The doctrine of privity means that a person cannot acquire rights or be subject to liabilities arising under a contract to which he is not a party. It does not mean that a contract between A and B cannot affect the legal rights of C indirectly." G.H. Treitel, *The Law of Contract* 538 (8th ed. 1991).

**privity of estate.** A mutual or successive relationship to the same right in property, as between grantor and grantee or landlord and tenant.

**privity of possession.** Privity between parties in successive possession of real property. • The existence of this type of privity is often at issue in adverse-possession claims.

**vertical privity.** **1.** *Commercial law.* The legal relationship between parties in a product's chain of distribution (such as a manufacturer and a seller). **2.** Privity between one who signs a contract containing a restrictive covenant and one who acquires the property burdened by it.

**2.** Joint knowledge or awareness of something private or secret, esp. as implying concurrence or consent <privity to a crime>.

**privy** (*priv-ee*), *n. pl.* A person having a legal interest of privity in any action, matter, or property; a person who is in privity with another. • Traditionally, there were six types of privies: (1) *privies in blood*, such as an heir and an ancestor; (2) *privies in representation*, such

as an executor and a testator or an administrator and an intestate person; (3) *privies in estate*, such as grantor and grantee or lessor and lessee; (4) *privies in respect to a contract* — the parties to a contract; (5) *privies in respect of estate and contract*, such as a lessor and lessee where the lessee assigns an interest, but the contract between lessor and lessee continues because the lessor does not accept the assignee; and (6) *privies in law*, such as husband and wife. **Pl. privies.**

**Privy Council.** In Britain, the principal council of the sovereign, composed of the cabinet ministers and other persons chosen by royal appointment to serve as privy councillors. • The functions of the Privy Council are now mostly ceremonial. See JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

**Privy Councillor.** A member of the Privy Council.

**privy purse.** *English law.* The income set apart for the sovereign's personal use.

**privy seal. 1.** A seal used in making out grants or letters patent before they are passed under the great seal. **2.** (*cap.*) LORD PRIVY SEAL.

**privy signet.** *Hist.* The signet or seal used by the sovereign in making out grants and private letters.

**privy verdict.** See VERDICT.

**prize. 1.** Something of value awarded in recognition of a person's achievement. **2.** A vessel or cargo captured at sea or seized in port by the forces of a nation at war, and therefore liable to being condemned or appropriated as enemy property.

**prize court.** See COURT.

**prize fighting.** Fighting for a reward or prize; esp., professional boxing.

"Prize fighting . . . was not looked upon with favor by the common law as was a friendly boxing match or wrestling match. On the other hand it was not punishable by the common law unless it was fought in a public place, or for some other reason constituted a breach of the peace." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 480 (3d ed. 1982).

**prize goods.** See GOODS.

**prize law.** The system of laws applicable to the capture of prize at sea, dealing with such mat-

ters as the rights of captors and the distribution of the proceeds.

**prize money.** **1.** A dividend from the proceeds of a captured vessel, paid to the captors. **2.** Money offered as an award.

**PRO.** *abbr.* PEER-REVIEW ORGANIZATION.

**pro** (proh). [Latin] For.

**proamita** (proh-am-ə-tə). [Latin] *Roman & civil law.* A great-great aunt; the sister of one's great-grandfather.

**proamita magna** (proh-am-ə-tə mag-nə). [Latin] *Civil law.* A great-great-great-aunt.

**proavia** (proh-ay-vee-ə). [Latin] *Roman & civil law.* A great-grandmother.

**proavunculus** (proh-ə-vəŋk-yə-ləs). [Latin] *Civil law.* A great-grandmother's brother.

**probabilis causa** (prə-bay-bə-lis kaw-zə). [Latin] Probable cause.

**probable cause.** A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. • Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — Also termed *reasonable cause; sufficient cause; reasonable grounds.* Cf. REASONABLE SUSPICION.

"Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. As emphasized in *Beck v. Ohio* [379 U.S. 89, 85 S.Ct. 223 (1964)]: 'If subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate, and the people would be "secure in their persons, houses, papers, and effects" only in the discretion of the police.' The probable cause test, then, is an objective one; for there to be probable cause, the facts must be such as would warrant a belief by a reasonable man." Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 3.3, at 140 (2d ed. 1992).

**probable-cause hearing.** See PRELIMINARY HEARING.

**probable consequence.** An effect or result that is more likely to follow its supposed cause than not to follow it.

**probable-desistance test.** *Criminal law.* A common-law test for the crime of attempt, focusing on whether the defendant has exhibited dangerous behavior indicating a likelihood of committing the crime. See ATTEMPT (2).

**probable evidence.** See *presumptive evidence* under EVIDENCE.

**probandum** (proh-ban-dəm), *n.* A fact to be proved. Pl. **probanda.** See *fact in issue* under FACT.

**probata** (proh-bay-tə). [Latin] *pl.* PROBATUM.

**probate** (proh-bayt), *n.* **1.** The judicial procedure by which a testamentary document is established to be a valid will; the proving of a will to the satisfaction of the court. • Unless set aside, the probate of a will is conclusive upon the parties to the proceedings (and others who had notice of them) on all questions of testamentary capacity, the absence of fraud or undue influence, and due execution of the will. But probate does not preclude inquiry into the validity of the will's provisions or on their proper construction or legal effect. — Also termed *proof of will.*

**informal probate.** Probate designed to operate with minimal involvement of the probate court. • Most modern probate codes encourage this type of administration, with an independent personal representative. — Also termed *independent probate.*

**probate in common form.** *Hist.* Probate granted in the registry, without any formal procedure in court, on the executor's ex parte application. • This type of probate is revocable.

**probate in solemn form.** *Hist.* Probate granted in open court; as a final decree, when all interested parties have been given notice. • This type of probate is irrevocable for all parties who have had notice of the proceeding, unless a later will is discovered.

**small-estate probate.** An informal procedure for administering small estates, less structured than the normal process and usually not requiring the assistance of an attorney.

**2.** Loosely, a personal representative's actions in handling a decedent's estate. **3.** Loosely, all the subjects over which probate courts have jurisdiction. **4.** *Archaic.* A nonresident plaintiff's proof of a debt by swearing before a notary public or other officer that the debt is correct, just, and due, and by having the notary attach a jurat.

**probate, vb.** **1.** To admit (a will) to proof. **2.** To administer (a decedent's estate). **3.** To grant probation to (a criminal); to reduce (a sentence) by means of probation.

**probate asset.** See *legal asset* under ASSET.

**probate bond.** See BOND (2).

**probate code.** A collection of statutes setting forth the law (substantive and procedural) of decedents' estates and trusts.

**probate court.** See COURT.

**probate distribution.** See DISTRIBUTION.

**probate duty.** See DUTY (4).

**probate estate.** A decedent's property subject to administration by a personal representative. See *decedent's estate* under ESTATE.

**probate homestead.** A homestead, exempt from creditors' claims, set apart for use by a decedent's surviving spouse and minor children. See HOMESTEAD.

**probate in common form.** See PROBATE.

**probate in solemn form.** See PROBATE.

**probate judge.** See JUDGE.

**probate jurisdiction.** See JURISDICTION.

**probate register.** See REGISTER.

**probatio** (prə-bay-shee-oh). [Latin] *Roman & civil law.* Proof.

**plena probatio.** See *probatio plena*.

**probatio mortua** (prə-bay-shee-oh mor-choo-ə). [Latin] Dead proof; proof by an inanimate object such as a deed or other instrument.

**probatio plena** (prə-bay-shee-oh plee-nə). [Latin] *Civil law.* Full proof; proof by two witnesses or a public instrument. — Also termed *plena probatio*.

**probatio semi-plena** (prə-bay-shee-oh semi-plee-nə). [Latin] *Civil law.* Half-full proof; half-proof; proof by one witness or a private instrument.

**probatio viva** (prə-bay-shee-oh vi-və). [Latin] Living proof; that is, proof by the mouth of a witness.

**probation. 1.** A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison. Cf. PA-ROLE.

**shock probation.** Probation that is granted after a brief stay in jail or prison. ● Shock probation is intended to awaken the defendant to the reality of confinement for failure to abide by the conditions of probation. This type of probation is discretionary with the sentencing judge and is usu. granted within 180 days of the original sentence. Cf. *shock incarceration* under INCARCERATION.

**2.** The act of judicially proving a will. See PROBATE.

**probation before judgment.** See *deferred judgment* under JUDGMENT.

**probationer.** A convicted criminal who is on probation.

**probation officer.** A government officer who supervises the conduct of a probationer.

**probation without judgment.** See *deferred judgment* under JUDGMENT.

**probatio plena.** See PROBATIO.

**probatio semi-plena.** See PROBATIO.

**probatio viva.** See PROBATIO.

**probative** (proh-bə-tiv), *adj.* Tending to prove or disprove. ● Courts can exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. — **probativeness, n.**

**probative evidence.** See EVIDENCE.

**probative fact.** See FACT.

**probator** (proh-bay-tər), *n.* *Hist.* An accused person who confesses to a crime but asserts that another also participated in the crime. ● The probator had to undertake to prove the supposed accomplice's guilt.

**probatum** (proh-bay-təm), *n.* [Latin] Something conclusively established or proved; proof. Pl. **probata.** Cf. ALLEGATUM.

**pro bono** (proh boh-noh), *adv. & adj.* [Latin *pro bono publico* "for the public good"] Being or



involving uncompensated legal services performed esp. for the public good <took the case pro bono> <50 hours of pro bono work each year>.

**pro bono et malo** (proh boh-noh et mal-oh). [Latin] For good and ill. See DE BONO ET MALO.

**probus et legalis homo** (proh-bəs et læ-gay-lis hoh-moh). [Law Latin] A good and lawful man. ● This phrase referred to a juror who was legally competent to serve on a jury. Pl. **probi et legales homines**.

**procedendo** (proh-sə-den-doh). [Latin] A higher court's order directing a lower court to determine and enter a judgment in a previously removed case.

**procedendo ad iudicium**. See DE PROCEDENDO AD IUDICIUM.

**procedural consolidation**. See JOINT ADMINISTRATION.

**procedural-default doctrine**. The principle that a federal court lacks jurisdiction to review the merits of a habeas corpus petition if a state court has refused to review the complaint because the petitioner failed to follow reasonable state-court procedures.

**procedural due process**. See DUE PROCESS.

**procedural law**. The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves. — Also termed *adjective law*. Cf. SUBSTANTIVE LAW.

**procedural presumption**. See PRESUMPTION.

**procedural right**. See RIGHT.

**procedural unconscionability**. See UNCONSCIONABILITY.

**procedure**. **1.** A specific method or course of action. **2.** The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution. See CIVIL PROCEDURE; CRIMINAL PROCEDURE.

**proceeding**. **1.** The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. **2.** Any procedural means for seeking redress from a tribunal or agency. **3.** An act or step that is part of a larger action. **4.**

The business conducted by a court or other official body; a hearing. **5. Bankruptcy.** A particular dispute or matter arising within a pending case — as opposed to the case as a whole.

“ ‘Proceeding’ is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word ‘action,’ but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment. As applied to actions, the term ‘proceeding’ may include — (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of *ne exeat*; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in code practice; (11) the taking of the appeal or writ of error; (12) the *remittitur*, or sending back of the record to the lower court from the appellate or reviewing court; (13) the enforcement of the judgment, or a new trial, as may be directed by the court of last resort.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3–4 (2d ed. 1899).

**adjudicatory proceeding**. See *adjudicatory hearing* under HEARING.

**administrative proceeding**. See ADMINISTRATIVE PROCEEDING.

**collateral proceeding**. A proceeding brought to address an issue incidental to the principal proceeding.

**competency proceeding**. A proceeding to assess a person's mental capacity. ● A competency hearing may be held either in a criminal context to determine a defendant's competency to stand trial or as a civil proceeding to assess whether a person should be committed to a mental-health facility.

**contempt proceeding**. A judicial or quasi-judicial hearing conducted to determine whether a person has committed contempt.

**core proceeding**. See CORE PROCEEDING.

**criminal proceeding**. A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial.

**ex parte proceeding** (eks pahr-tee). A proceeding in which not all parties are present or given the opportunity to be heard. — Also termed *ex parte hearing*.

**in camera proceeding** (in kam-ə-rə). A proceeding held in a judge's chambers or other private place.

**informal proceeding**. A trial conducted in a more relaxed manner than a typical court

trial, such as an administrative hearing or a trial in small-claims court.

**judicial proceeding.** Any court proceeding.

**non-core proceeding.** See RELATED PROCEEDING.

**related proceeding.** See RELATED PROCEEDING.

**special proceeding.** 1. A proceeding that can be commenced independently of a pending action and from which a final order may be appealed immediately. 2. A proceeding involving statutory or civil remedies or rules rather than the rules or remedies ordinarily available under rules of procedure; a proceeding providing extraordinary relief.

**summary proceeding.** A nonjury proceeding that settles a controversy or disposes of a case in a relatively prompt and simple manner. — Also termed *summary trial*. Cf. *plenary action* under ACTION.

“Summary proceedings were such as were directed by Act of Parliament, there was no jury, and the person accused was acquitted or sentenced only by such person as statute had appointed for his judge. The common law was wholly a stranger to summary proceedings.” A.H. Manchester, *Modern Legal History of England and Wales, 1750-1950* 160 (1980).

**supplementary proceeding.** 1. A proceeding held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor’s assets available to satisfy the judgment. 2. A proceeding that in some way supplements another.

**proceeds (proh-seedz), n.** 1. The value of land, goods, or investments when converted into money; the amount of money received from a sale <the proceeds are subject to attachment>. 2. Something received upon selling, exchanging, collecting, or otherwise disposing of collateral. UCC § 9-306(1). • Proceeds differ from other types of collateral because they constitute any collateral that has changed in form. For example, if a farmer borrows money and gives the creditor a security interest in the harvest, the harvested wheat is collateral. If the farmer then exchanges the harvest for a tractor, the tractor becomes the proceeds of the wheat.

**net proceeds.** The amount received in a transaction minus the costs of the transaction (such as expenses and commissions). — Also termed *net balance*.

**proceres (pros-ə-reez).** [Latin] Nobles; lords. See DOMUS PROCERUM.

**process, n.** 1. The proceedings in any action or prosecution <due process of law>. 2. A summons or writ, esp. to appear or respond in court <service of process>. — Also termed *judicial process*; *legal process*.

“Process is so denominated because it *proceeds* or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writs or judicial means by which he is brought to answer.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 338 (2d ed. 1826).

**ailable process.** A process instructing an officer to take bail after arresting a defendant. • The defendant’s discharge is required by law after the tender of suitable security.

**civil process.** A process that issues in a civil lawsuit.

**compulsory process.** A process, with a warrant to arrest or attach included, that compels a person to appear in court as a witness.

**criminal process.** A process (such as an arrest warrant) that issues to compel a person to answer for a crime.

**final process.** A process issued at the conclusion of a judicial proceeding; esp., a writ of execution.

**irregular process.** A process not issued in accordance with prescribed practice. • Whether the process is void or merely voidable depends on the type of irregularity. Cf. *regular process*.

**mesne process (meen).** 1. A process issued between the commencement of a lawsuit and the final judgment or determination. 2. The procedure by which a contumacious defendant is compelled to plead.

**original process.** A process issued at the beginning of a judicial proceeding.

“Original process is any writ or notice by which a defendant is called upon to appear and answer the plaintiff’s declaration. The commencement of the suit at common law was formerly by original writ. Judicial process was by summons, attachment, arrest and outlawry.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 3, at 17 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**regular process.** A process that issues lawfully according to prescribed practice. Cf. *irregular process*.

**summary process.** 1. An immediate process, issuing and taking effect without intermediate applications or delays. 2. A legal procedure used to resolve a controversy more efficiently and expeditiously than ordinary methods. 3. The legal documents achieving such a result. 4. A procedure for repossessing real property from a tenant upon default. See

*summary eviction* under EVICTION. **5.** See SHOW-CAUSE PROCEEDING.

**trust process.** In some states (particularly in New England), garnishment or foreign attachment.

**void process.** Legal process that, in some material way, does not comply with the required form.

**3. Patents.** A method, operation, or series of actions intended to achieve some end or result. Cf. MACHINE; MANUFACTURE.

“A process is a way of doing something. If it is a patentable process, it must be a new, useful, and nonobvious way of doing something. If the process is patentable, the result of that process — the something getting done — need not of itself be new, useful, or nonobvious. In other words, the result of an inventive process need not be an invention itself.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 24 (2d ed. 1990).

**process, abuse of.** See MALICIOUS ABUSE OF PROCESS.

**process agent.** See AGENT.

**process by foreign attachment.** See FACTORIZING PROCESS.

**processioning.** The survey and inspection of land boundaries, performed esp. in the former English colonies along the southeastern seaboard, and analogous to the English *perambulation*.

**process patent.** See PATENT (3).

**process server.** A person authorized by law or by a court to formally deliver process to a defendant or respondent. See SERVICE (1).

**processum continuando** (prə-sēs-əm kən-tin-yoo-an-doh). [Latin “for continuing process”] *Hist.* A writ for the continuation of process after the death of a justice authorized to review cases by a commission of oyer and terminer.

**procès-verbal** (proh-say-vair-bahl). [French “official record of oral proceedings”] *Civil & int’l law.* A detailed, authenticated written report of a proceeding, esp. of an international conference; PROTOCOL (3). ● A *procès-verbal* may be cast in various forms, according to the style a country prefers.

**prochein ami** (proh-shen ə-mee). [Law French] See NEXT FRIEND.

**proclaim, vb.** To declare formally or officially.

**proclamation.** A formal public announcement made by the government.

**proclamation by lord of manor.** *Hist.* A proclamation (repeated three times) made by the lord of a manor requiring an heir or devisee of a deceased copyholder to pay a fine and be admitted to the estate, failing which the lord could seize the lands provisionally.

**proclamation of exigents** (eks-ə-jənts). *Hist.* Repeated proclamations by the sheriff of an imminent outlawing of a person in the county where the person lived. See EXIGENT.

**proclamation of rebellion.** *Hist.* A proclamation made by the sheriff, warning a person who failed to obey a Chancery subpoena or attachment that a commission of rebellion would issue if the person continued to resist the Chancery process. See COMMISSION OF REBELLION.

**proclamation of recusants** (rek-yə-zənts). *Hist.* A proclamation by which persons who willfully absented themselves from church could be convicted on nonappearance at the assizes.

**proclamator** (prok-lə-may-tər). *Hist.* An official at the English Court of Common Pleas responsible for making proclamations.

**pro-con divorce.** See DIVORCE.

**pro consilio impendendo** (proh kən-sil-ee-oh im-pen-den-doh). [Law Latin] For counsel to be given. ● Advice given could formerly serve as consideration for the grant of an annuity.

**proconsul** (proh-kon-səl). [Latin] *Roman law.* **1.** An ex-consul who continued to exercise the powers of a consul after leaving office. **2.** The governor of certain senatorial provinces.

**pro corpore regni** (proh kor-pə-ree reg-ni). [Latin] In behalf of the body of the realm.

**proctor.** **1.** One appointed to manage the affairs of another. **2.** PROCURATOR (4).

**procuracy** (prok-yə-rə-see). The document that grants power to an attorney-in-fact; a letter of agency.

**procurare** (prok-yə-rair-ee), *vb.* [Latin] To take care of another's affairs.

**procuratio** (prok-yə-ray-shee-oh). [Latin] Management of another's affairs; agency.

**procuration** (prok-yə-ray-shən). **1.** The act of appointing someone as an agent or attorney-in-fact. **2.** The authority vested in a person so appointed; the function of an attorney. **3.** PROCUREMENT.

**procuration fee.** *English law.* A commission or brokerage allowed to a solicitor for obtaining a loan. — Also termed *procurator money*.

**procurator** (prok-yə-ray-tər). **1.** *Roman law.* A person informally appointed to represent another in a judicial proceeding. Cf. COGNITOR. **2.** *Roman law.* A government official, usu. subordinate in authority to a provincial governor. **3.** *Hist. English law.* An agent, attorney, or servant. **4.** *Eccles. law.* An advocate of a religious house; one who represents a religious society in its legal matters. — Also termed *proctor*. **5.** An agent or attorney-in-fact. **6.** *Scots law.* A solicitor who represents clients in the lower courts.

**procuratores ecclesiae parochialis** (prok-yə-rə-tor-eez e-klee-z[h]ee-ee pə-roh-kee-ay-lis). [Latin] *Hist.* A churchwarden; a representative of a parish church.

**procurator fiscal.** *Scots law.* The representative of the Lord Advocate in inferior courts, responsible for investigating crimes and prosecuting in court.

**procurator in rem suam** (prok-yə-ray-tər in rem s[y]oo-əm). [Latin] **1.** *Roman law.* An assignee of a right of action. **2.** *Scots law.* Procurator in his own affair. • This phrase refers to a situation in which a person acts under a power of attorney with reference to property that the person has acquired.

**procuratorium** (prok-yə-rə-tor-ee-əm). [Law Latin] *Hist.* The instrument by which a person appointed a procurator as the person's representative in litigation.

**procurator litis** (prok-yə-ray-tər li-tis). [Latin] *Roman law.* A person who represents another in a lawsuit. Cf. DEFENSOR (1).

**procurator negotiorum** (prok-yə-ray-tər ni-goh-shee-or-əm). [Latin] *Civil law.* An attor-

ney-in-fact; a manager of business affairs for another.

**procurator provinciae** (prok-yə-ray-tər prə-vin-shee-ee). [Latin] *Roman law.* A provincial officer responsible for overseeing revenue matters. • This officer also exercised some judicial powers over revenue-related issues.

**procuratrix** (prok-yə-ray-triks). [Latin] *Hist.* A female agent or attorney-in-fact.

**procurement** (proh-kyoor-mənt), *n.* **1.** The act of getting or obtaining something. — Also termed *procurator*. **2.** The act of persuading or inviting another, esp. a woman or child, to have illicit sexual intercourse. — **procure**, *vb.*

**procurement contract.** See CONTRACT.

**procurement of breach of contract.** See TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS.

**procurer.** One who induces or prevails upon another to do something, esp. to engage in an illicit sexual act. See PIMP.

**procuring an abortion.** See ABORTION.

**procuring cause.** See CAUSE (1).

**pro. def. abbr.** PRO DEFENDENTE.

**pro defectu emptorum** (proh di-fek-t[y]oo emp-tor-əm). [Latin] For want of purchasers.

**pro defectu exitus** (proh di-fek-t[y]oo eks-ətəs). [Latin] For, or in case of, default of issue.

**pro defectu haeredis** (proh di-fek-t[y]oo hæ-ree-dis). [Latin] For want of an heir.

**pro defectu iustitiae** (proh di-fek-t[y]oo jəs-tish-ee-ee). [Latin] For defect or want of justice.

**pro defendente** (proh def-ən-den-tee). [Latin] For the defendant. — Abbr. *pro. def.* Cf. PRO QUERENTE.

**pro derelicto** (proh der-ə-lik-toh). [Latin] As derelict or abandoned. • This refers to property subject to usucaption. See USUCAPIO.

**prodigal** (prod-ə-gəl), *n.* *Civil law.* A person whose affairs are managed by a curator because

of the person's wasteful spending or other bad conduct.

**pro dignitate regali** (proh dig-nə-tay-tee ri-gay-li). [Latin] In consideration of the royal dignity.

**prodigus** (prod-ə-gəs). [Latin] *Roman law*. See PRODIGAL.

**prodition** (prə-dish-ən). *Archaic*. Treason; treachery.

**proditor** (prod-ə-tər). *Archaic*. A traitor.

**proditorie** (proh-di-tor-ee-ee), *adv.* [Latin] Treasonably. • This word formerly appeared in a treason indictment.

**pro diviso** (proh di-vi-zoh). [Latin] As divided; i.e., in severalty.

**pro domino** (proh dom-ə-noh). [Latin] As master or owner; in the character of a master.

**pro donazione** (proh də-nay-shee-oh-nee). [Latin] *Roman & civil law*. As a gift; as in case of gift. • This is a ground of usucaption. See USUCAPIO.

**pro dote** (proh doh-tee). [Latin] *Civil law*. As a dowry; by title of dowry. • This is a ground of usucaption. See USUCAPIO.

**produce** (proh-doo), *n.* The product of natural growth, labor, or capital; esp., agricultural products.

**produce** (prə-doo), *vb.* **1.** To bring into existence; to create. **2.** To provide (a document, witness, etc.) in response to subpoena or discovery request. **3.** To yield (as revenue). **4.** To bring (oil, etc.) to the surface of the earth.

**producent** (prə-d[y]oo-sənt), *n.* *Hist. Eccles. law*. The party calling a witness.

**producer.** See INSURANCE AGENT.

**producer price index.** An index of wholesale price changes, issued monthly by the U.S. Bureau of Labor Statistics. — Formerly also termed *wholesale price index*. Cf. CONSUMER PRICE INDEX.

**producing cause.** See *proximate cause* under CAUSE (1).

**product.** Something that is distributed commercially for use or consumption and that is usu. (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption. See PRODUCTS LIABILITY.

**defective product.** A product that is unreasonably dangerous for normal use, as when it is not fit for its intended purpose, inadequate instructions are provided for its use, or it is inherently dangerous in its design or manufacture.

**product defect.** See DEFECT.

**product-extension merger.** See MERGER.

**production burden.** See BURDEN OF PRODUCTION.

**production for commerce.** The production of goods that an employer intends for interstate commerce. • This is one criterion by which an employer may be subject to the Fair Labor Standards Act.

**production of suit.** *Common-law pleading.* The plaintiff's burden to produce evidence to confirm the allegations made in the declaration.

**productio sectae** (prə-dək-shee-oh sek-tee). [Latin] See PRODUCTION OF SUIT.

**product liability.** See PRODUCTS LIABILITY.

**product market.** See MARKET.

**products liability, n.** **1.** A manufacturer's or seller's tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product. • Products liability can be based on a theory of negligence, strict liability, or breach of warranty. **2.** The legal theory by which liability is imposed on the manufacturer or seller of a defective product. **3.** The field of law dealing with this theory. — Also termed *product liability*; (specif.) *manufacturer's liability*. — **product-liability, adj.** See LIABILITY.

"The law of products liability is that body of common and statutory law permitting money reparation for substandard conduct of others resulting in product-related injury to the injured party's person or property. Resistance to the description of products liability as a doctrine having receded, there is today a guiding tenet in the law of product-related injury that is the distillate of seventy years of decisional law. The birth of the doctrine can be dated at 1916, the publication of the immensely influen-

tial decision in *MacPherson v. Buick Motor Co.*, [217 N.Y. 382, 111 N.E. 1050 (1916)], in which the New York Court of Appeals held that the manufacturer of any product capable of serious harm if incautiously made owed a duty of care in the design, inspection, and fabrication of the product, a duty owed not only to the immediate purchaser but to all persons who might foreseeably come into contact with the product. Following *MacPherson*, the doctrine as formed by decisions of the ensuing decades is that a buyer, user, consumer or bystander in proximity to an unreasonably dangerous product, and who is injured in person or in property by its dangerous propensities, may recover in damages from the manufacturer or intermediate seller." 1 M. Stuart Madden, *Products Liability* § 1.1, at 1-2 (2d ed. 1988).

**strict products liability.** Products liability arising when the buyer proves that the goods were unreasonably dangerous and that (1) the seller was in the business of selling goods, (2) the goods were defective when they were in the seller's hands, (3) the defect caused the plaintiff's injury, and (4) the product was expected to and did reach the consumer without substantial change in condition.

**products-liability action.** A lawsuit brought against a manufacturer, seller, or lessor of a product — regardless of the substantive legal theory or theories upon which the lawsuit is brought — for personal injury, death, or property damage caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. — Also termed *product-liability action*.

**products-liability insurance.** See INSURANCE.

**product test.** See DURHAM RULE.

**pro emptore** (proh emp-tor-ee). [Latin] *Civil law.* As a purchaser; by the title of a purchaser. See USUCAPIO.

**pro facto** (proh fak-toh). [Latin] For the fact; considered or held as fact.

**pro falso clamore suo** (proh fal-soh [or fawl-soh] klə-mor-ee s[y]loo-oh). [Latin "for his false claim"] A nominal amercement of a plaintiff for a false allegation, inserted in a judgment for the defendant.

**profane, adj.** (Of speech or conduct) irreverent to something held sacred.

**profectitious** (proh-fek-tish-ee-əs). [Latin] That which descends from an ancestor.

**profer** (proh-fər). *Hist.* **1.** An offer or proffer. **2.** A return made by a sheriff of an account into the Exchequer.

**profereus** (proh-fer-enz). [Latin] The party that proposes a contract or a condition in a contract. Pl. **proferentes** (proh-fə-ren-teez).

**profert** (proh-fərt). *Common-law pleading.* A declaration on the record stating that a party produces in court the deed or other instrument relied on in the pleading.

**profert in curia** (proh-fərt in kyoor-ee-ə). [Law Latin] He produces in court. • In common-law pleading, this phrase was used in a declaration asserting that the plaintiff was ready to produce, or had produced, the deed or other instrument on which the action was founded.

**profess, vb.** To declare openly and freely; to confess.

**professio juris** (prə-fes[h]-ee-oh joor-is). [Latin] A recognition of the right of a contracting party to stipulate the law that will govern the contract.

**profession. 1.** A vocation requiring advanced education and training. **2.** Collectively, the members of such a vocation.

**professional, n.** A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.

**professional association.** See ASSOCIATION.

**professional corporation.** See CORPORATION.

**professional negligence.** See MALPRACTICE.

**proffer** (prof-ər), *vb.* To offer or tender (something, esp. evidence) for immediate acceptance. — **proffer, n.**

**proffered evidence.** See EVIDENCE.

**proficua** (prə-fik-yoo-ə). [Law Latin] *Hist.* Profits; esp., the profits of an estate in land.

**profit, n. 1.** The excess of revenues over expenditures in a business transaction; GAIN (2). Cf. EARNINGS; INCOME.

**accumulated profit.** Profit that has accrued but not yet been distributed; earned sur-

plus. — Also termed *undivided profit*. See *retained earnings* under EARNINGS.

**gross profit.** Total sales revenue less the cost of the goods sold, no adjustment being made for additional expenses and taxes. Cf. *net profit*.

**mesne profits.** The profits of an estate received by a tenant in wrongful possession between two dates. — Also termed (archaically) *medium tempus*.

**net profit.** Total sales revenue less the cost of the goods sold and all additional expenses. — Also termed *net revenue*. Cf. *gross profit*.

**operating profit.** Total sales revenue less all operating expenses, no adjustment being made for any nonoperating income and expenses, such as interest payments.

**paper profit.** A profit that is anticipated but not yet realized. • Gains from stock holdings, for example, are paper profits until the stock is actually sold at a price higher than its original purchase price. — Also termed *unrealized profit*.

**surplus profit.** *Corporations.* The excess of revenue over expenditures. • Some jurisdictions prohibit the declaration of a dividend from sources other than surplus profit.

**undistributed profit.** See *retained earnings* under EARNINGS.

**undivided profit.** See *accumulated profit*.

**unrealized profit.** See *paper profit*.

**2.** A servitude that gives the right to pasture cattle, dig for minerals, or otherwise take away some part of the soil; PROFIT À PRENDRE. • A profit may be either appurtenant or in gross. See SERVITUDE.

**profit-and-loss account.** See ACCOUNT.

**profit-and-loss statement.** See INCOME STATEMENT.

**profit à prendre** (a *prawn*-drə or ah *prahn*-dər). [Law French “profit to take”] (*usu. pl.*) A right or privilege to go on another’s land and take away something of value from its soil or from the products of its soil (as by mining, logging, or hunting). — Also termed *right of common*. Pl. **profits à prendre**. Cf. EASEMENT.

**profiteering**, *n.* The taking advantage of unusual or exceptional circumstances to make excessive profits, as in the selling of scarce goods at inflated prices during war. — **profiteer**, *vb.*

**profit insurance.** See INSURANCE.

**profit margin.** **1.** The difference between the cost of something and the price for which it is sold. **2.** The ratio, expressed as a percentage, between this difference and the selling price. • For example, a widget costing a retailer \$10 and selling for \$15 has a profit margin of 33% (\$5 difference divided by \$15 selling price). — Often shortened to *margin*.

**profit-sharing plan.** An employer’s benefit plan that allows an employee to share in the company’s profits. • ERISA governs the administration of many profit-sharing plans. See EMPLOYEE RETIREMENT INCOME SECURITY ACT.

**qualified profit-sharing plan.** A plan in which an employer’s contributions are not taxed to the employee until distribution. • The employer is allowed to deduct the contributions. IRC (26 USCA) § 401.

**pro forma** (proh *for*-mə), *adj.* [Latin “for form”] **1.** Made or done as a formality. **2.** (Of an invoice or financial statement) provided in advance to describe items, predict results, or secure approval.

**progener** (proh-*jee*-nər). [Latin] A grandson-in-law.

**progeny** (proj-ə-nee), *n. pl.* **1.** Children or descendants; offspring <only one of their progeny attended law school>. **2.** A group of successors; esp., a line of opinions succeeding a leading case <*Erie* and its progeny>.

**prognosis** (prog-*noh*-sis). **1.** The process of forecasting the probable outcome of a present medical condition (such as a disease). **2.** The forecast of such an outcome. Cf. DIAGNOSIS.

**program trading.** A form of computerized securities trading that usu. involves buying or selling large amounts of stocks while simultaneously selling or buying index futures in offsetting amounts.

**progressive tax.** See TAX.

**pro hac vice** (proh hahk *vee*-chay or hak *vi*-see *also* hahk *vees*). [Latin] For this occasion or particular purpose. • The phrase usu. refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted there temporarily for the purpose of conducting a particular case. — Abbr. *p.h.v.* See *admission*

*pro hac vice* under ADMISSION (2). For *owner pro hac vice*, see *demise charter* under CHARTER (4).

**prohibit, vb.** **1.** To forbid by law. **2.** To prevent or hinder.

**prohibited degree.** See DEGREE.

**prohibitio de vasto, directa parti** (proh-hə-bish-ee-oh dee vas-toh, di-rek-tə pahr-tī). [Latin “prohibition of waste, directed to the party”] *Hist.* A writ issued during litigation prohibiting a tenant from committing waste.

**prohibition.** **1.** A law or order that forbids a certain action. **2.** An extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a nonjudicial officer or entity from exercising a power. — Also termed (in sense 2) *writ of prohibition*.

“Prohibition is a kind of common-law injunction to prevent an unlawful assumption of jurisdiction. . . . It is a common-law injunction against governmental usurpation, as where one is called coram non iudice (before a judge unauthorized to take cognizance of the affair), to answer in a tribunal that has no legal cognizance of the cause. It arrests the proceedings of any tribunal, board, or person exercising judicial functions in a manner or by means not within its jurisdiction or discretion.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 341, at 542 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**3. (cap.)** The period from 1920 to 1933, when the manufacture, transport, and sale of alcoholic beverages in the United States was forbidden by the 18th Amendment to the Constitution. • The 18th Amendment was repealed by the 21st Amendment.

**prohibitory injunction.** See INJUNCTION.

**prohibitory interdict.** See INTERDICT (1).

**pro illa vice** (proh il-ə vi-see). [Latin] For that turn.

**pro indefenso** (proh in-də-fen-soh). [Latin] As undefended; as making no defense.

**pro indiviso** (proh in-də-vi-zoh), *adj.* [Latin “as undivided”] (Of property) owned or possessed by several persons at the same time, without partition.

**pro interesse suo** (proh in-tər-es-ee s[y]oo-oh). [Latin] According to his interest; to the extent of his interest. • A third party, for example, may be allowed to intervene *pro interesse suo*.

**project financing.** See FINANCING.

**projectio** (prə-jek-shee-oh). [Latin] Alluvion created by the sea. See ALLUVION.

**projector.** See PROMOTER.

**projet** (proh-zhay). [French] A draft of a proposed measure, treaty, or convention.

**pro laesione fidei** (proh lee-zhee-oh-nee fi-dee-i). [Latin] For breach of faith.

**pro legato** (proh lə-gay-toh). [Latin] As a legacy; by the title of a legacy. • This is a ground of usucaption. See USUCAPIO.

**proles** (proh-leez). [Latin] Offspring; esp., the issue of a lawful marriage.

**proletariat** (proh-lə-tair-ee-ət). The working class; those without capital who sell their labor to survive.

**proletarius** (proh-lə-tair-ee-əs). [Latin] *Roman law.* One of the common people; a member of a lower class who owned little or no property.

**prolicide** (proh-lə-sid). The killing of offspring; esp., the crime of killing a child shortly before or after birth.

**prolixity** (proh-lik-sə-tee). The unnecessary and superfluous stating of facts in pleading or evidence.

**prolocutor** (proh-lok-yə-tər). **1. Eccles. law.** The president or chair of a convocation. **2. Hist.** The speaker of the British House of Lords. • This office now belongs to the Lord Chancellor.

**pro majori cautela** (proh mə-jor-ī kaw-tee-lə). [Latin] For greater caution; by way of additional security. • This phrase usu. applies to an act done or to a clause put in an instrument as a precaution.

**promatertera** (proh-mə-tər-tər-ə). [Latin] *Roman & civil law.* A great-great-aunt; the sister of one’s great-grandmother.

**promatertera magna** (proh-mə-tər-tər-ə mag-nə). [Latin] *Civil law.* A great-great-great-aunt.

**promise, n.** **1.** The manifestation of an intention to act or refrain from acting in a specified manner, conveyed in such a way that another is



justified in understanding that a commitment has been made; a person's assurance that the person will or will not do something. ● A binding promise — one that the law will enforce — is the essence of a contract.

"By common usage, a promise is an expression leading another person justifiably to expect certain conduct on the part of the promisor. Such an expression is a promise, whether enforceable at law or not. It is indeed an essential element in every contract. Society does not guarantee the fulfillment of all expectations so induced." William R. Anson, *Principles of the Law of Contract* 6 n.3 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"[Promise] means not only the physical manifestations of assurance by words or conduct, but also the moral duty to make good the assurance by performance. If by reason of other operative facts the promise is recognized as creating a legal duty, the promise is a contract." Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 4 (Walter H.E. Jaeger ed., 3d ed. 1957).

"It is well to make clear two points at the outset . . . The first is that I do not believe that all promises are morally binding; accordingly, I use the term 'promise' without prejudging the question whether the promise creates an obligation. The second is that, where a promise does create an obligation, the reason for that may depend upon whether the promise was explicit or implied. There is thus, in my view, a fundamental distinction between explicit and implied promises, and when I use the word 'promise' without qualification, I normally mean an explicit promise." P.S. Atiyah, *Promises, Morals, and Law* 8 (1981).

2. The words in a promissory note expressing the maker's intention to pay a debt. ● A mere written acknowledgment that a debt is due is insufficient to constitute a promise. — **promise**, *vb.*

**aleatory promise** (ay-lee-ə-tor-ee). A promise conditional on the happening of a fortuitous event, or on an event that the parties believe is fortuitous.

**alternative promise**. A contractual promise to do one of two or more things, any one of which must satisfy the promisee for the promise to qualify as consideration.

"A promise in the alternative may be made because each of the alternative performances is the object of desire to the promisee. Or the promisee may desire one performance only, but the promisor may reserve an alternative which he may deem advantageous. In either type of case the promise is consideration if it cannot be kept without some action or forbearance which would be consideration if it alone were bargained for. But if the promisor has an unfettered choice of alternatives, and one alternative would not have been consideration if separately bargained for, the promise in the alternative is not consideration." Restatement (Second) of Contracts § 77 cmt. b (1981).

**bare promise**. See *naked promise*.

**collateral promise**. A promise to guarantee the debt of another, made primarily without

benefit to the party making the promise. ● Unlike an original promise, a collateral promise must be in writing to be enforceable. See MAIN-PURPOSE RULE.

**conditional promise**. A promise that is conditioned on the occurrence of an event <she made a conditional promise to sell the gold on April 2 unless the price fell below \$300 an ounce before that time>. ● A conditional promise is not illusory as long as the condition is not entirely within the promisor's control.

**dependent promise**. A promise to be performed by a party only when another obligation has first been performed by another party.

**divisible promises**. Promises that are capable of being divided into independent parts.

**false promise**. A promise made with no intention of carrying it out.

**fictitious promise**. See *implied promise*.

**gratuitous promise**. A promise made in exchange for nothing; a promise not supported by consideration. ● A gratuitous promise is not ordinarily legally enforceable. — Also termed *bare promise*; *naked promise*.

**illusory promise**. A promise that appears on its face to be so insubstantial as to impose no obligation on the promisor; an expression cloaked in promissory terms but actually containing no commitment by the promisor. ● For example, if a guarantor promises to make good on the principal debtor's obligation "as long as I think it's in my commercial interests," the promisor is not really bound.

"An apparent promise which, according to its terms, makes performance optional with the promisor no matter what may happen, or no matter what course of conduct in other respects he may pursue, is in fact no promise. Such an expression is often called an illusory promise." Samuel Williston, *A Treatise on the Law of Contracts* § 1A, at 5 (Walter H.E. Jaeger ed., 3d ed. 1957).

**implied promise**. A promise created by law to render a person liable on a contract so as to avoid fraud or unjust enrichment. — Also termed *fictitious promise*.

"Under some circumstances the promise inferred is called an implied promise and in others it is referred to as a constructive promise. But whichever conclusion is reached, the result is the same. In other words an implied promise and a constructive promise are not treated differently. The theoretical difference between the two is that a promise implied from the conduct of the parties arises by construction of law, only when justice requires it under the circumstances." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 4-12, at 234-35 (3d ed. 1987).

**independent promise.** See *unconditional promise*.

**marriage promise.** A betrothal; an engagement to be married.

**mutual promises.** Promises given simultaneously by two parties, each promise serving as consideration for the other.

**new promise.** A previously unenforceable promise that a promisor revives and agrees to fulfill, as when a debtor agrees to pay a creditor an amount discharged in the debtor's bankruptcy.

**original promise.** A promise to guarantee the debt of another, made primarily for the benefit of the party making the promise. • An original promise need not be in writing to be enforceable. See MAIN-PURPOSE RULE.

**promise implied in fact.** A promise existing by inference from the circumstances or actions of the parties. See *implied promise*.

**promise in consideration of marriage.** A promise for which the actual performance of the marriage is the consideration, as when a man agrees to transfer property to a woman if she will marry him. • A promise to marry, however, is not considered a promise in consideration of marriage.

**promise in restraint of trade.** A promise whose performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation. • Such a promise is usu. unenforceable.

**remedial promise.** A seller's promise to repair or replace goods, or the like, or to refund the price if the goods (1) do not conform to the contract or to a representation at the time of the delivery of the goods, (2) conform at the time of delivery but later fail to perform as agreed, or (3) contain a defect. UCC § 2-102(a)(31).

**unconditional promise.** A promise that either is unqualified or requires nothing but the lapse of time to make the promise presently enforceable. • A party who makes an unconditional promise must perform that promise even though the other party has not performed according to the bargain. — Also termed *independent promise*.

**voidable promise.** A promise that one party may, under the law, declare void by reason of that party's incapacity or mistake, or by reason of the fraud, breach, or other fault of the other party.

**promisee** (prom-is-ee). One to whom a promise is made.

**promise implied in fact.** See PROMISE.

**promise in consideration of marriage.** See PROMISE.

**promise in restraint of trade.** See PROMISE.

**promise not to compete.** See *noncompetition covenant* under COVENANT (1).

**promisor** (prom-is-or). One who makes a promise; esp., one who undertakes a contractual obligation.

**promissor** (prom-is-ər). [Latin] *Civil law*. A promisor; specif., a party who undertakes to do a thing in response to the interrogation of the other party (the *stipulator*).

**promissory, adj.** Containing or consisting of a promise <the agreement's promissory terms>.

**promissory condition.** See CONDITION (2).

**promissory estoppel.** See ESTOPPEL.

**promissory fraud.** See FRAUD.

**promissory note.** See NOTE (1).

**promissory oath.** See OATH.

**promissory representation.** See REPRESENTATION.

**promissory warranty.** See WARRANTY (3).

**promoter.** 1. A person who encourages or incites. 2. A founder or organizer of a corporation or business venture; one who takes the entrepreneurial initiative in founding or organizing a business or enterprise. — Formerly also termed *projector*.

“The complete judicial acceptance of the term ‘promoter’ is a matter of comparatively recent date. In some of the early cases, persons engaged in the formation of a corporation are spoken of as ‘projectors.’ Other cases of about the same period, though recognizing the obligations flowing therefrom, do not give any name to the relation in which such persons stand to the contemplated company. The word *promoter*, while undoubtedly employed in common parlance before that time, does not seem to have been used in any reported decision until after it had been used, and for the purposes of the act defined, in the Joint Stock Companies Act of 1844 . . . . [A] person may be said to be a promoter of a corporation if before its organization, he directly or indirectly solicits subscriptions to its stock, or assumes to act in its behalf in the purchase of property, or in the securing of its charter, or otherwise

assists in its organization." Manfred W. Ehrich, *The Law of Promoters* § 1, at 2-3; § 13, at 15 (1916).

"A promoter is a person who takes the initiative in developing and organizing a new business venture. A promoter may act either alone or with co-promoters. The term 'promoter' is not one of opprobrium; indeed, the promoter is often an aggressive, imaginative entrepreneur who fulfills the essential economic function of taking an idea and creating a profitable business to capitalize on the idea." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 64 (3d ed. 1991).

**promoting prostitution.** See PANDERING.

**promulgate** (proh-məl-gair-ee), *vb.* [Latin] *Roman law.* To promulgate; to make (a law) publicly known after its enactment.

**promulgate** (prə-məl-gayt or prom-əl-gayt), *vb.*

1. To declare or announce publicly; to proclaim.
2. To put (a law or decree) into force or effect.

**promulgation** (prom-əl-gay-shən or proh-məl-). The official publication of a new law or regulation, by which it is put into effect.

**promutuum** (proh-myoo-choo-əm). [Latin "as if lent"] *Civil law.* A quasi-contract in which a person who received money or property in error agrees to return what was received to the person who paid it.

**pronepos** (proh-nep-ohs). [Latin] *Roman & civil law.* A great-grandson.

**proneptis** (proh-nep-tis). [Latin] *Roman & civil law.* A great-granddaughter.

**pro non scripto** (proh non skrip-toh). [Latin] As not written; as though it had not been written.

**pronotary** (proh-noh-tə-ree), *n.* First notary.

**pronounce**, *vb.* To announce formally <pronounce judgment>.

**pronunciation** (prə-nən-see-ay-shən). *Archaic.* A sentence or decree.

**pronurus** (proh-nə-rəs). [Latin] *Civil law.* The wife of a grandson or great-grandson.

**proof**, *n.* 1. The establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence in the mind of a fact-finder. 2. Evidence that determines the judgment of a court. 3. An attested document that constitutes legal evidence.

**affirmative proof.** Evidence establishing the fact in dispute by a preponderance of the evidence.

**conditional proof.** A fact that amounts to proof as long as there is no other fact amounting to disproof. — Also termed *presumptive proof*.

**double proof.** 1. *Bankruptcy.* Proof of claims by two or more creditors against the same debt. • This violates the general rule that there can be only one claim with respect to a single debt. 2. *Evidence.* Corroborating government evidence (usu. by two witnesses) required to sustain certain convictions.

**full proof.** 1. *Civil law.* Proof by two witnesses or by public instrument. 2. Evidence that satisfies the minds of the jury of the truth of the fact in dispute beyond a reasonable doubt.

**literal proof.** *Civil law.* Written evidence. Cf. *testimonial proof*.

**negative proof.** Proof that establishes a fact by showing that its opposite is not or cannot be true. Cf. *positive proof*.

**positive proof.** Direct or affirmative proof. Cf. *negative proof*.

**preliminary proof.** *Insurance.* The first proof offered of a loss occurring under a policy, usu. sent in to the underwriters with a notification of the claim.

**presumptive proof.** See *conditional proof*.

**proof beyond a reasonable doubt.** Proof that precludes every reasonable hypothesis except that which it tends to support.

**testimonial proof.** *Civil law.* Proof by the evidence of witnesses, rather than proof by written instrument. Cf. *literal proof*.

**proof, burden of.** See BÜRDEN OF PROOF.

**proof brief.** See BRIEF.

**proof of acknowledgment.** An authorized officer's certification — based on a third party's testimony — that the signature of a person (who usu. does not appear before the notary) is genuine and was freely made. — Also termed *certificate of proof*.

**proof of claim.** *Bankruptcy.* A creditor's written statement that is submitted to show the basis and amount of the creditor's claim. Pl. **proofs of claim.**

**informal proof of claim.** A proof of claim stating a creditor's demand for payment and

intent to hold the debtor's bankruptcy estate liable, but that does not comply with the Bankruptcy Code's form for proofs of claim. ● A late-filed proof of claim may be given effect if the creditor had timely filed an informal proof of claim.

**proof of debt.** The establishment by a creditor of a debt in some prescribed manner (as by affidavit) as a first step in recovering the debt from an estate or property; PROOF OF CLAIM.

**proof of loss.** An insured's formal statement of loss required by an insurance company before it will determine whether the policy covers the loss.

**proof of service.** A document filed (as by a sheriff) in court as evidence that process has been successfully served on a party. — Also termed *return of service*. See SERVICE (1).

**proof of will.** See PROBATE (1).

**pro opere et labore** (proh **op**-ə-ree et **lə**-bor-ee). [Latin] For work and labor.

**propaganda.** *Int'l law.* **1.** The systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause. **2.** The ideas or information so disseminated.

"As early as the Middle Ages, both the Church and worldly powers had realised that public opinion was of importance in their struggles with each other. . . . [R]ulers thought it necessary to put their case before public opinion in neutral and hostile countries, though they did their best to prevent any 'seditious' material from abroad reaching their own loyal subjects. The position changed with the growth of democracy and of the demand for the popular control of foreign affairs. Then propaganda became an indispensable secondary weapon of power politics both in peace and war." Georg Schwarzenberger, *Power Politics: A Study of International Society* 166-67 (2d ed. 1951).

**pro partibus liberandis** (proh **pahr**-ti-bəs **lib**-ə-ran-dis). [Latin "to free the portions"] *Hist.* A writ for the partition of lands among coheirs.

**propatruus** (proh-pay-troo-əs or -pa-troo-əs). [Latin] *Roman & civil law.* A great-grandfather's brother.

**propatruus magnus** (proh-pay-troo-əs [or -pa-troo-əs] **mag**-nəs). [Latin] *Roman & civil law.* A great-great-great-uncle.

**pro per,** *adv. & adj.* See PRO PERSONA.

**proper,** *n.* See PRO SE.

**proper care.** See *reasonable care* under CARE.

**proper evidence.** See *admissible evidence* under EVIDENCE.

**proper feud.** See FEUD.

**proper independent advice.** See INDEPENDENT ADVICE.

**proper law.** *Conflict of laws.* The substantive law that, under the principles of conflicts of law, governs a transaction.

**proper lookout,** *n.* The duty of a vehicle operator to exercise caution to avoid collisions with pedestrians or other vehicles.

**proper party.** See PARTY (2).

**pro persona** (proh pār-soh-nə), *adv. & adj.* [Latin] For one's own person; on one's own behalf <a *pro persona* brief>. — Sometimes shortened to *pro per*. See PRO SE.

**property.** **1.** The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership <the institution of private property is protected from undue governmental interference>. **2.** Any external thing over which the rights of possession, use, and enjoyment are exercised <the airport is city property>.

"In its widest sense, property includes all a person's legal rights, of whatever description. A man's property is all that is *his in law*. This usage, however, is obsolete at the present day, though it is common enough in the older books. . . . In a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man's land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation. . . . In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and *in rem*. The law of property is the law of proprietary rights *in rem*, the law of proprietary rights *in personam* being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not. . . . Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself." John Salmond, *Jurisprudence* 423-24 (Glanville L. Williams ed., 10th ed. 1947).

**abandoned property.** Property that the owner voluntarily surrenders, relinquishes, or disclaims. Cf. *lost property*; *mislaid property*.

**absolute property.** Property that one has full and complete title to and control over.

**common property.** 1. Property that is held jointly by two or more persons. 2. See COMMON AREA.

**community property.** See COMMUNITY PROPERTY.

**corporeal property.** 1. The right of ownership in material things. 2. Property that can be perceived, as opposed to incorporeal property; tangible property.

**distressed property.** Property that must be sold because of mortgage foreclosure or because it is part of an insolvent estate.

**exempt property.** See EXEMPT PROPERTY.

**general property.** Property belonging to a general owner. See *general owner* under OWNER.

**income property.** Property that produces income, such as rental property.

**incorporeal property.** 1. An in rem proprietary right that is not classified as corporeal property. • Incorporeal property is traditionally broken down into two classes: (1) *jura in re aliena* (encumbrances), whether over material or immaterial things, examples being leases, mortgages, and servitudes; and (2) *jura in re propria* (full ownership over an immaterial thing), examples being patents, copyrights, and trademarks. 2. A legal right in property having no physical existence. • Patent rights, for example, are incorporeal property. — Also termed *incorporeal chattel*; *incorporeal thing*.

**intangible property.** Property that lacks a physical existence. • Examples include bank accounts, stock options, and business goodwill. Cf. *tangible property*.

**intellectual property.** See INTELLECTUAL PROPERTY.

**literary property.** See LITERARY PROPERTY.

**lost property.** Property that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search. Cf. *abandoned property*; *mislaid property*.

**marital property.** Property that is acquired from the time when a marriage begins until one spouse files for divorce (assuming that a divorce decree actually results). • In equitable-distribution states, the phrase *marital property* is the rough equivalent of *community*

*property*. See COMMUNITY PROPERTY; EQUITABLE DISTRIBUTION.

**maternal property.** Property that comes from the mother of a party, and other ascendants of the maternal stock.

**mislaid property.** Property that has been voluntarily relinquished by the owner with an intent to recover it later — but that cannot now be found. Cf. *abandoned property*; *lost property*.

“A distinction is drawn between lost property and mislaid property. An article is ‘mislaid’ if it is intentionally put in a certain place for a temporary purpose and then inadvertently left there when the owner goes away. A typical case is the package left on the patron’s table in a bank lobby by a depositor who put the package there for a moment while he wrote a check and then departed without remembering to take it with him. There is always a ‘clue’ to the ownership of property which is obviously *mislaid* rather than *lost*, because of the strong probability that the owner will know where to return for his chattel when he realizes he has gone away without it.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 310–11 (3d ed. 1982).

**mixed property.** Property with characteristics of both real property and personal property — such as heirlooms and fixtures.

**movable property.** See MOVABLE.

**neutral property.** See NEUTRAL PROPERTY.

**paternal property.** Property that comes from the father of a party, and other ascendants of the paternal stock.

**personal property.** 1. Any movable or intangible thing that is subject to ownership and not classified as real property. — Also termed *personalty*; *personal estate*; *movable estate*; (in plural) *things personal*. Cf. *real property*. 2. Property not used in a taxpayer’s trade or business or held for income production or collection.

**private property.** Property — protected from public appropriation — over which the owner has exclusive and absolute rights.

**public property.** State- or community-owned property not restricted to any one individual’s use or possession.

**qualified property.** A temporary or special interest in a thing (such as a right to possess it), subject to being totally extinguished by the occurrence of a specified contingency over which the qualified owner has no control.

**qualified-terminable-interest property.** Property that passes by a QTIP trust from a deceased spouse to the surviving spouse and that (if the executor so elects) qualifies for the marital deduction provided that the spouse is entitled to receive income in pay-

ments made at least annually for life and that no one has the power to appoint the property to anyone other than the surviving spouse. ● This property is included in the surviving spouse's estate at death, where it is subject to the federal estate tax. See *QTIP trust* under TRUST.

**real property.** Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. ● Real property can be either corporeal (soil and buildings) or incorporeal (easements). — Also termed *realty*; *real estate*. Cf. *personal property*.

"Historically, the line between real and personal property stems from the types of assets administered on death respectively, in the king's and in the church's courts. The king's courts, concerned with the preservation of the feudal structure, dealt with fees simple, fees tail and life estates. Estates for years, gradually evolving out of contracts made by feudally unimportant persons, clearly became interests in land but never fully attained the historical dignity of being 'real property.' The early economic unimportance of money, goods and things other than land permitted the church courts to take over the handling of all such assets on the death of the owner. When the development of trade and of capitalism caused assets of these types to assume great, and sometimes paramount, importance we found ourselves with the two important categories of property, namely 'real' and 'personal' property, each with its set of rules evolved from a different matrix. The pressure of modern society has been strongly for assimilation and the resultant elimination of this line, but this movement is far from complete attainment of its goal." 1 Richard R. Powell, *Powell on Real Property* § 5.04, at 5-7 to 5-8 (Patrick J. Rohan ed., rev. ed. 1998).

**scheduled property.** *Insurance.* Property itemized on a list (usu. attached to an insurance policy) that records property values, which provide the basis for insurance payments in the event of a loss under an insurance policy.

**separate property.** See SEPARATE PROPERTY.

**special property.** Property that the holder has only a qualified, temporary, or limited interest in, such as (from a bailee's standpoint) bailed property.

**tangible personal property.** Corporeal personal property of any kind; personal property that can be seen, weighed, measured, felt, or touched, or is in any way perceptible to the senses.

**tangible property.** Property that has physical form and characteristics. Cf. *intangible property*.

**property, law of.** See LAW OF PROPERTY.

**property crimes.** See CRIMES AGAINST PROPERTY.

**property-damage insurance.** See *property insurance* under INSURANCE.

**property dividend.** See *asset dividend* under DIVIDEND.

**property insurance.** See INSURANCE.

**property of the debtor.** *Bankruptcy.* Property that is owned or (in some instances) possessed by the debtor, including property that is exempted from the bankruptcy estate. 11 USCA § 541(b).

**property of the estate.** *Bankruptcy.* The debtor's tangible and intangible property interests (including both legal and equitable interests) that fall under the bankruptcy court's jurisdiction because they were owned or held by the debtor when the bankruptcy petition was filed. 11 USCA § 541.

**property right.** See RIGHT.

**property settlement.** 1. A judgment in a divorce case determining the distribution of the marital property between the divorcing parties. 2. MARITAL AGREEMENT.

**property tax.** See TAX.

**property tort.** See TORT.

**prophylactic** (proh-fə-lak-tik), *adj.* Formulated to prevent something <a prophylactic rule>. — **prophylaxis** (proh-fə-lak-sis), **prophylactic**, *n.*

**propinquity** (prə-ping-kwə-tee). The state of being near; specif., kindred or parentage <degrees of propinquity>.

**propior sobrina** (proh-pee-ər sə-bri-nə), *n.* [Latin] *Civil law.* The daughter of a great-uncle or great-aunt, paternal or maternal.

**propior sobrino** (proh-pee-ər sə-bri-noh), *n.* [Latin] *Civil law.* The son of a great-uncle or great-aunt, paternal or maternal.

**propone** (prə-pohn), *vb.* To put forward for consideration or adjudication <propone a will for probate>.

**proponent, n.** **1.** A person who puts forward a legal instrument for consideration or acceptance; esp., one who offers a will for probate. **2.** A person who puts forward a proposal; one who argues in favor of something <a proponent of gun control>.

**proportionality.** *Int'l law.* The principle that the use of force should be in proportion to the threat or grievance provoking the use of force.

**proportionality review.** *Criminal law.* An appellate court's analysis of whether a death sentence is arbitrary or capricious by comparing the case in which it was imposed with similar cases in which the death penalty was approved or disapproved.

**proportional representation.** An electoral system that allocates legislative seats to each political group in proportion to its popular voting strength.

**proportional tax.** See *flat tax* under TAX.

**proposal.** Something offered for consideration or acceptance.

**proposed regulation.** A draft administrative regulation that is circulated among interested parties for comment. — Abbr. prop. reg.

**propositus** (proh-poz-ə-təs). [Law Latin] *Civil law.* A person from whom descent is to be traced; the person whose rights or obligations are in issue.

**pro possessore** (proh pos-ə-sor-ee). [Latin] As a possessor; by title of a possessor; by virtue of possession alone.

**pro posse suo** (proh pos-ee s[y]oo-oh). [Latin] To the extent of one's power or ability.

**propound** (prə-pownd), *vb.* **1.** To offer for consideration or discussion. **2.** To make a proposal. **3.** To put forward (a will) as authentic.

**propounder.** An executor or administrator who offers a will or other testamentary document for admission to probate; PROPONENT.

**prop. reg.** *abbr.* PROPOSED REGULATION.

**propria persona** (proh-pree-ə pər-soh-nə). [Latin] In his own person; that is, pro se. — Abbr. *p.p.*

**proprietary** (prə-pri-ə-ter-ee), *adj.* **1.** Of or relating to a proprietor <the licensee's proprietary rights>. **2.** Of, relating to, or holding as property <the software designer sought to protect its proprietary data>.

**proprietary act.** See PROPRIETARY FUNCTION.

**proprietary article.** See ARTICLE.

**proprietary capacity.** See CAPACITY (1).

**proprietary capital.** See CAPITAL.

**proprietary drug.** See DRUG.

**proprietary duty.** A duty owed by a municipality while acting in a proprietary, rather than governmental, activity.

**proprietary function.** *Torts.* A municipality's conduct that is performed for the profit or benefit of the municipality, rather than for the benefit of the general public. • Generally, a municipality is not immune from tort liability for proprietary acts. — Also termed *proprietary act*. Cf. GOVERNMENTAL FUNCTION.

**proprietary government.** See GOVERNMENT.

**proprietary information.** Information in which the owner has a protectable interest. See TRADE SECRET.

**proprietary interest.** See INTEREST (2).

**proprietary lease.** See LEASE.

**proprietary power.** See *power coupled with an interest* under POWER.

**proprietary right.** See RIGHT.

**proprietas** (prə-pri-ə-tas). [Latin] *Hist.* Ownership.

**proprietas nuda** (prə-pri-ə-tas n[y]oo-də). Naked ownership; the mere title to property, without the usufruct.

**proprietas plena** (prə-pri-ə-tas plee-nə). Full ownership, including both the title and the usufruct.

**proprietary probanda** (prə-pri-ə-tay-tee prə-ban-də). See DE PROPRIETATE PROBANDA.

**proprietor**, *n.* An owner, esp. one who runs a business. — **proprietorship**, *n.* See SOLE PROPRIETORSHIP.

**propriety**. *Hist.* Privately owned possessions; property.

**proprio vigore** (**proh**-pree-oh vi-**gor**-ee). [Latin] By its own strength.

**propter** (**prop**-tər). [Latin] For; on account of.

**propter affectum** (**prop**-tər ə-**fek**-təm). See *challenge propter affectum* under CHALLENGE (2).

**propter defectum** (**prop**-tər də-**fek**-təm). See *challenge propter defectum* under CHALLENGE (2).

**propter defectum sanguinis** (**prop**-tər də-**fek**-təm **sang**-gwi-nis). [Latin] On account of failure of blood.

**propter delictum** (**prop**-tər də-**lik**-təm). See *challenge propter delictum* under CHALLENGE.

**propter honoris respectum** (**prop**-tər hə-**nor**-is ri-**spek**-təm). [Latin] On account of respect of honor or rank.

**propter impotentiam** (**prop**-tər im-pə-**ten**-shee-əm). [Latin] On account of helplessness. ● This was formerly given as a ground for gaining a property interest in a wild animal, based on the animal's inability to escape (as where, for example, a young bird could not yet fly away).

**propter privilegium** (**prop**-tər priv-ə-**lee**-jee-əm). [Latin] On the account of privilege. ● This describes a way of acquiring a property interest in a wild animal, based on the claimant's exclusive right to hunt in a particular park or preserve.

**pro quer.** *abbr.* PRO QUERENTE.

**pro querente** (proh kwə-**ren**-tee). [Latin] For the plaintiff. — *Abbr. pro quer.* Cf. PRO DEFENDEnte.

**pro rata** (proh **ray**-tə or **rah**-tə or **ra**-tə), *adv.* Proportionately; according to an exact rate, measure, or interest <the liability will be assessed pro rata between the defendants>. — **pro rata**, *adj.* See RATABLE.

**pro rata clause.** An insurance-policy provision — usu. contained in the "other insurance" section of the policy — that limits the insurer's liability to payment of the portion of the loss that the face amount of the policy bears to the total insurance available on the risk. — Also termed *pro rata distribution clause*. Cf. ESCAPE CLAUSE; EXCESS CLAUSE.

**prorate** (**proh**-rayt or **proh**-rayt), *vb.* To divide, assess, or distribute proportionately <prorate taxes between the buyer and the seller>. — **proration**, *n.*

**pro re nata** (proh ree **nay**-tə). [Latin "in the light of what has arisen"] A law or course of action adopted in response to a pressing exigency, rather than in conformity with established precedent.

"So far as may be, the state leaves the rule of right to be declared and constituted by the agreement of those concerned with it. So far as possible, it contents itself with executing the rules which its subjects have made for themselves. And in so doing it acts wisely. For, in the first place, the administration of justice is enabled in this manner to escape in a degree not otherwise attainable the disadvantages inherent in the recognition of rigid principles of law. Such principles we must have; but if they are established *pro re nata* by the parties themselves, they will possess a measure of adaptability to individual cases which is unattainable by the more general legislation of the state itself." John Salmond, *Jurisprudence* 352 (Glanville L. Williams ed., 10th ed. 1947).

**prorogation** (proh-rə-**gay**-shən). The act of putting off to another day; esp., the discontinuance of a legislative session until its next term.

**prorogue** (proh-**roh**g or prə-), *vb.* **1.** To postpone or defer. **2.** To discontinue a session of (a legislative assembly, esp. the British Parliament) without dissolution. **3.** To suspend or discontinue a legislative session.

**proscribe**, *vb.* **1.** To outlaw or prohibit; to forbid. **2.** *Roman & civil law.* To post or publish the name of (a person) as condemned to death and forfeiture of property.

**proscription**, *n.* **1.** The act of prohibiting; the state of being prohibited. **2.** A prohibition or restriction. — **proscriptive**, *adj.* Cf. PRESCRIPTION.

**pro se** (proh **say** or **see**), *adv. & adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. — Also termed *pro persona*; *in propria persona*.



**pro se**, *n.* One who represents oneself in a court proceeding without the assistance of a lawyer <the third case on the court's docket involving a pro se>. — Also termed *pro per*.

**prosecute**, *vb.* **1.** To commence and carry out a legal action <because the plaintiff failed to prosecute its contractual claims, the court dismissed the suit>. **2.** To institute and pursue a criminal action against (a person) <the notorious felon has been prosecuted in seven states>. **3.** To engage in; carry on <the company prosecuted its business for 12 years before going bankrupt>. — **prosecutory**, *adj.*

**prosecuting attorney.** See DISTRICT ATTORNEY.

**prosecuting witness.** See WITNESS.

**prosecution.** **1.** The commencement and carrying out of any action or scheme <the prosecution of a long, bloody war>. **2.** A criminal proceeding in which an accused person is tried <the conspiracy trial involved the prosecution of seven defendants>. — Also termed *criminal prosecution*.

**sham prosecution.** A prosecution that seeks to circumvent a defendant's double-jeopardy protection by appearing to be prosecuted by another sovereignty, when it is in fact controlled by the sovereignty that already prosecuted the defendant for the same crime. ● A sham prosecution is, in essence, a misuse of the dual-sovereignty rule. Under that rule, a defendant's protection against double jeopardy does not provide protection against a prosecution by a different sovereignty. For example, if the defendant was first tried in federal court and acquitted, that fact would not forbid the state authorities from prosecuting the defendant in state court. But a sham prosecution — for example, a later state-court prosecution that is completely dominated or manipulated by the federal authorities that already prosecuted the defendant, so that the state-court proceeding is merely a tool of the federal authorities — will not withstand a double-jeopardy challenge. See DUAL-SOVEREIGNTY DOCTRINE.

**3.** The government attorneys who initiate and maintain a criminal action against an accused defendant <the prosecution rests>.

**prosecution history.** *Patents.* The complete record of proceedings in the Patent and Trademark Office from the initial application to the issued patent. — Also termed *file wrapper*.

**prosecution-history estoppel.** *Patents.* The doctrine preventing a patent holder from invoking the doctrine of equivalents if the holder, during the application process, surrendered certain claims or interpretations of the invention. — Also termed *file-wrapper estoppel*. See DOCTRINE OF EQUIVALENTS.

**prosecutor**, *n.* **1.** A legal officer who represents the government in criminal proceedings. See DISTRICT ATTORNEY; UNITED STATES ATTORNEY; ATTORNEY GENERAL.

**public prosecutor.** See DISTRICT ATTORNEY.

**special prosecutor.** A lawyer appointed to investigate and, if justified, seek indictments in a particular case. See *independent counsel* under COUNSEL.

**2.** A private person who institutes and carries on a legal action, esp. a criminal action. — Also termed (in sense 2) *private prosecutor*. — **prosecutorial**, *adj.*

**prosecutorial discretion.** See DISCRETION.

**prosecutorial misconduct.** A prosecutor's improper or illegal act (or failure to act), esp. involving an attempt to persuade the jury to wrongly convict a defendant or assess an unjustified punishment. ● If prosecutorial misconduct results in a mistrial, a later prosecution may be barred under the Double Jeopardy Clause.

**prosecutrix** (pros-ə-kyoo-triks). *Archaic.* A female prosecutor.

**prosequi** (prahs-ə-kwi), *vb.* [Latin] To follow up or pursue; to sue or prosecute. See NOLLE PROSEQUI.

**prosequitur** (prə-sek-wə-tər or proh-). [Latin] He follows or pursues; he prosecutes.

**prosocer** (proh-sə-sər). [Latin] *Civil law.* A father-in-law's father; a spouse's grandfather.

**prosocerus** (prə-sos-ə-rəs). [Latin] *Civil law.* A wife's or husband's grandmother.

**pro socio** (proh soh-shee-oh). [Latin] As a partner. ● This was the name of an action on behalf of a partner.

**pro solido** (proh sol-ə-doh). [Latin] For the whole; without division.

**prospectant evidence.** See EVIDENCE.

**prospective, *adj.*** **1.** Effective or operative in the future <prospective application of the new statute>. Cf. RETROACTIVE. **2.** Anticipated or expected; likely to come about <prospective clients>.

**prospective damages.** See DAMAGES.

**prospective heir.** See HEIR.

**prospective nuisance.** See *anticipatory nuisance* under NUISANCE.

**prospective statute.** See STATUTE.

**prospective waiver.** See WAIVER (1).

**prospectus** (prə-spek-təs). A printed document that describes the main features of an enterprise (esp. a corporation's business) and that is distributed to prospective buyers or investors; esp., a written description of a securities offering. ● Under SEC regulations, a publicly traded corporation must provide a prospectus before offering to sell stock in the corporation. Pl. **prospectuses.** See REGISTRATION STATEMENT. Cf. TOMBSTONE.

**newspaper prospectus.** A summary prospectus that the SEC allows to be disseminated through advertisements in newspapers, magazines, or other periodicals sent through the mails as second-class matter (though not distributed by the advertiser), when the securities involved are issued by a foreign national government with which the United States maintains diplomatic relations.

**preliminary prospectus.** A prospectus for a stock issue that has been filed but not yet approved by the SEC. ● The SEC requires such a prospectus to contain a notice — printed in distinctive red lettering — that the document is not complete or final. That notice, which is usu. stamped or printed in red ink, typically reads as follows: "The information here given is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities cannot be sold — and offers to buy cannot be accepted — until the registration statement becomes effective. This prospectus does not constitute an offer to buy. And these securities cannot be sold in any state where the offer, solicitation, or sale would be unlawful before registration or qualification under the securities laws of that state." — Also termed *red-herring prospectus*; *red herring*.

**prostitution, *n.*** **1.** The act or practice of engaging in sexual activity for money or its equivalent; commercialized sex.

"Prostitution is not itself a crime in England or Scotland, although certain activities of prostitutes and those who profit from prostitution are prohibited, such as soliciting in a public place, procuring, letting premises for the purpose of prostitution and so forth. On the other hand, prostitution was, at least at one time, prohibited in all American jurisdictions." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 470 (3d ed. 1982).

**2.** The act of debasing. — **prostitute, *vb.*** — **prostitute, *n.***

**pro tanto** (proh tan-toh), *adv. & adj.* [Latin] To that extent; for so much; as far as it goes <the debt is pro tanto discharged> <a pro tanto payment>.

**protected activity.** Conduct that is permitted or encouraged by a statute or constitutional provision, and for which the actor may not legally be retaliated against. ● For example, Title VII of the Civil Rights Act prohibits an employer from retaliating against an employee who opposes a discriminatory employment practice or helps in investigating an allegedly discriminatory employment practice. An employee who is retaliated against for engaging in one of those activities has a claim against the employer. 42 USCA § 2000e-3(a).

**protected class.** See CLASS (1).

**protected person.** See PERSON.

**protecting power.** *Int'l law.* A country responsible for protecting another country's citizens during a conflict or a suspension of diplomatic ties between the citizens' country and a third party. ● After a protecting power is accepted by both belligerents, it works to ensure the proper treatment of nationals who are in a belligerent's territory, esp. prisoners of war. If the parties cannot agree on a protecting power, the Red Cross is often appointed to this position.

**protection, *n.*** **1.** The act of protecting. **2.** PROTECTIONISM. **3.** COVERAGE (1). **4.** A document given by a notary public to sailors and other persons who travel abroad, certifying that the bearer is a U.S. citizen. — **protect, *vb.***

**protectionism.** The protection of domestic businesses and industries against foreign competition by imposing high tariffs and restricting imports.

**protection money.** **1.** A bribe paid to an officer as an inducement not to interfere with the criminal activities of the briber. • Examples include payments to an officer in exchange for the officer's releasing an arrestee, removing records of traffic violations from a court's files, and refraining from making a proper arrest. **2.** Money extorted from a business owner by one who promises to "protect" the business premises, with the implied threat that if the owner does not pay, the person requesting the payment will harm the owner or damage the premises.

**protection order.** See RESTRAINING ORDER (1).

**protective committee.** A group of security holders or preferred stockholders appointed to protect the interests of their group when the corporation is liquidated or reorganized.

**protective custody.** See CUSTODY (1).

**protective order.** **1.** A court order prohibiting or restricting a party from engaging in a legal procedure (esp. discovery) that unduly annoys or burdens the opposing party or a third-party witness. **2.** RESTRAINING ORDER (1).

**protective search.** See SEARCH.

**protective sweep.** A police officer's quick and limited search — conducted after the officer has lawfully entered the premises — based on a reasonable belief that such a search is necessary to protect the officer or others from harm.

**protective tariff.** See TARIFF (2).

**protective trust.** See TRUST.

**protectorate** (prə-tek-tə-rət). **1.** *Int'l law.* The relationship between a weaker nation and a stronger one when the weaker nation has transferred the management of its more important international affairs to the stronger nation. **2.** *Int'l law.* The weaker or dependent nation within such a relationship. **3.** (*usu. cap.*) The period in British history — from 1653 to 1659 — during which Oliver Cromwell and Richard Cromwell governed. **4.** The British government in the period from 1653 to 1659.

**pro tem.** *abbr.* PRO TEMPORE.

**pro tempore** (proh tem-pə-ree), *adv. & adj.* [Latin] For the time being; appointed to occupy

a position temporarily <a judge pro tempore>. — *Abbr.* pro tem.

**protest, n.** **1.** A formal statement or action expressing dissent or disapproval. **2.** A notary public's written statement that, upon presentment, a negotiable instrument was neither paid nor accepted. — Also termed *initial protest*; *noting protest*. Cf. NOTICE OF DISHONOR.

"Noting or initial protest is a memorandum made on [a dishonored] instrument, with the notary's initials, date, and the amount of noting charges, together with a statement of the cause of dishonor, such as 'no effects,' 'not advice,' or 'no account.' This is done to charge the memory of the notary, and should be done on the day of dishonor." Frederick M. Hinch, *John's American Notary and Commission of Deeds Manual* § 442, at 281 (3d ed. 1922).

**3.** A formal statement, usu. in writing, disputing a debt's legality or validity but agreeing to make payment while reserving the right to recover the amount at a later time. • The disputed debt is described as *under protest*. **4.** *Int'l law.* A formal communication from one subject of international law to another objecting to conduct or a claim by the latter as violating international law. See SUBJECT OF INTERNATIONAL LAW. — **protest, vb.**

**protestando** (proh-tə-stan-doh). [Law Latin] Protesting. • This emphatic word was used in a protestation to allege or deny something in an oblique manner.

**protestation** (prot-ə-stay-shən). *Common-law pleading.* A declaration by which a party makes an oblique allegation or denial of some fact, claiming that it does or does not exist or is or is not legally sufficient, while not directly affirming or denying the fact.

"The practice of protestation of facts not denied arose where the pleader, wishing to avail himself of the right to contest in a future action some traversable fact in the pending action, passes it by without traverse, but at the same time makes a declaration collateral or incidental to his main pleading, importing that the fact so passed over is untrue. The necessity for this arose from the rule that pleadings must not be double, and that every pleading is taken to admit such matters as it does not traverse. Such being its only purpose, it is wholly without effect in the action in which it occurs . . ." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 207, at 358 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**protest certificate.** A notarial certificate declaring (1) that a holder in due course has recruited the notary public to present a previously refused or dishonored negotiable instrument, (2) that the notary has presented the instrument to the person responsible for pay-

ment or acceptance (the *drawee*), (3) that the instrument was presented at a given time and place, and (4) that the drawee refused or dishonored the instrument. • In former practice, the notary would issue a protest certificate, which could then be presented to the drawee and any other liable parties as notice that the holder could seek damages for the dishonored negotiable instrument. — Also termed *notarial protest certificate*. See NOTICE OF DISHONOR.

**protest fee.** A fee charged by a bank or other financial institution when an item (such as a check) is presented but cannot be collected.

**prothonotary** (prə-**thon**-ə-ter-ee or proh-thə-**noh**-tə-ree), *n.* A chief clerk in certain courts of law. — Also termed *protonotary*. — **prothonotarial**, *adj.*

**protocol.** **1.** A summary of a document or treaty. **2.** A treaty amending and supplementing another treaty. **3.** The formal record of the proceedings of a conference or congress. — Also termed *procès-verbal*. **4.** The minutes of a meeting, usu. initialed by all participants after confirming accuracy. **5.** The rules of diplomatic etiquette; the practices that nations observe in the course of their contacts with one another.

**protonotary.** See PROTHONOTARY.

**protutor** (proh-t[y]oo-tər). *Civil law.* A person who, though not legally appointed as a guardian, administers another's affairs.

**prout patet per recordum** (proh-ət pay-tet-pər ri-kor-dəm). [Latin] As appears by the record.

**provable**, *adj.* Capable of being proved.

**prove**, *vb.* To establish or make certain; to establish the truth of (a fact or hypothesis) by satisfactory evidence.

**prover.** *Hist.* A person charged with a felony who attempts to obtain a pardon by confessing and naming accomplices.

**prove up**, *vb.* To present or complete the proof of (something) <deciding not to put a doctor on the stand, the plaintiff attempted to prove up his damages with medical records only>.

**prove-up**, *n.* The establishment of a prima facie claim. • A prove-up is necessary when a factual assertion is unopposed because even without

opposition, the claim must be supported by evidence.

**provided**, *conj.* On the condition or understanding (*that*) <we will sign the contract provided that you agree to the following conditions>.

**province**, *n.* **1.** An administrative district into which a country has been divided. **2.** A sphere of activity of a profession such as medicine or law.

**provincialis** (prə-vin-shee-ay-lis). [Latin] One who has a domicile in a province.

**provincial synod.** See SYNOD.

**provision.** **1.** A clause in a statute, contract, or other legal instrument. **2.** A stipulation made beforehand. See PROVISIO.

**provisional**, *adj.* **1.** Temporary <a provisional injunction>. **2.** Conditional <a provisional government>.

**provisional attachment.** See ATTACHMENT (1).

**provisional court.** See COURT.

**provisional director.** See DIRECTOR.

**provisional government.** See GOVERNMENT.

**provisional injunction.** See *preliminary injunction* under INJUNCTION.

**provisional partition.** See PARTITION.

**provisional remedy.** See REMEDY.

**provisional seizure.** See ATTACHMENT (1).

**provision of a fine.** *Hist.* A proclamation made after the conveying of land by fine, read aloud in court 16 times — four times in the term when the fine was made, and four times in the three succeeding terms.

**Provisions of Oxford.** *Hist.* During the reign of Henry III, a constitution created by the Mad Parliament and forming the King's advisory council that met with a group of barons several times a year to handle the country's affairs and resolve grievances, esp. those resulting from the King's avoidance of his obligations under Magna Carta. • The Provisions were effective

until the baron uprising in 1263 under Simon de Montfort.

**proviso** (prə-vi-zoh). **1.** A limitation, condition, or stipulation upon whose compliance a legal or formal document's validity or application may depend. **2.** In drafting, a provision that begins with the words *provided that* and supplies a condition, exception, or addition.

**provisor.** **1.** *Hist.* A provider of care or sustenance. **2.** *Eccles. law.* A person nominated by the Pope to be the next incumbent of a benefice that is not yet vacant.

**provocation**, *n.* Something (such as words or actions) that arouses anger or animosity in another, causing that person to respond in the heat of passion. • "Adequate" provocation can reduce a murder charge to voluntary manslaughter. — **provoke**, *vb.* — **provocative**, *adj.* See MANSLAUGHTER.

**provost marshal.** *Military law.* A staff officer who supervises a command's military police and advises the commander.

**proxenete** (prok-sə-nee-tə). [Latin] *Roman & civil law.* **1.** A person who negotiates or arranges the terms of a contract between parties; a broker. **2.** A person who negotiates marriages; a matchmaker. — Also termed *proxeneta*.

**proximate** (prok-sə-mit), *adj.* **1.** Immediately before or after. **2.** Very near or close in time.

**proximate cause.** See CAUSE (1).

**proximate consequence.** A result following an unbroken sequence from some (esp. negligent) event.

**proximate damages.** See DAMAGES.

**proximity.** The quality or state of being near in time, place, order, or relation.

**proxy**, *n.* **1.** One who is authorized to act as a substitute for another; esp., in corporate law, a person who is authorized to vote another's stock shares. **2.** The grant of authority by which a person is so authorized. **3.** The document granting this authority.

**proxy contest.** A struggle between two corporate factions to obtain the votes of uncommitted shareholders. • A proxy contest usu. occurs

when a group of dissident shareholders mounts a battle against the corporation's managers. — Also termed *proxy fight*.

**proxy marriage.** See MARRIAGE (2).

**proxy solicitation.** A request that a corporate shareholder authorize another person to cast the shareholder's vote at a corporate meeting.

**proxy statement.** An informational document that accompanies a proxy solicitation and explains a proposed action (such as a merger) by the corporation.

**PRP.** *abbr.* Potentially responsible party.

**prudent**, *adj.* Circumspect or judicious in one's dealings; cautious. — **prudence**, *n.*

**prudent-investor rule.** *Trusts.* The principle that a fiduciary must invest in only those securities or portfolios of securities that a reasonable person would buy. — Also termed *prudent-person rule*.

**prudent person.** See REASONABLE PERSON.

**prurient** (pruur-ee-ənt), *adj.* Characterized by or arousing inordinate or unusual sexual desire <films appealing to prurient interests>. — **prurience**, *n.* See OBSCENITY.

**p.s.** *abbr. (usu. cap.)* **1.** Public statute. See PUBLIC LAW (2). **2.** Postscript.

**pseudo-foreign-corporation statute.** A state law regulating foreign corporations that either derive a specified high-percentage of their income from that state or have a high percentage of their stock owned by people living in that state.

**pseudograph** (soo-də-graf). A false writing; a forgery.

**pseudo-guarantee treaty.** See *guaranty treaty* under TREATY.

**pseudonym** (sood-ə-nim), *n.* A fictitious name or identity. — **pseudonymous** (soo-don-ə-məs), *adj.* — **pseudonymity** (sood-ə-nim-ə-tee), *n.*

**PSI.** *abbr.* PRESENTENCE INVESTIGATION REPORT.

**psychopath** (sɪ-kə-path), *n.* **1.** A person with a mental disorder characterized by an extremely antisocial personality that often leads to aggressive, perverted, or criminal behavior. **2.** Loosely, a person who is mentally ill or unstable. — Also termed *sociopath*. — **psychopathy** (sɪ-kɒp-ə-thee), *n.* — **psychopathic** (sɪ-kə-path-ɪk), *adj.*

**psychotherapist-client privilege.** See *psychotherapist-patient privilege* under PRIVILEGE (3).

**psychotherapist-patient privilege.** See PRIVILEGE (3).

**PTI.** See *previously taxed income* under INCOME.

**PTO.** *abbr.* PATENT AND TRADEMARK OFFICE.

**PTP.** See *publicly traded partnership* under PARTNERSHIP.

**Pub. L.** *abbr.* PUBLIC LAW (2).

**public**, *adj.* **1.** Relating or belonging to an entire community, state, or nation. **2.** Open or available for all to use, share, or enjoy. **3.** (Of a company) having shares that are available on an open market.

**public**, *n.* **1.** The people of a nation or community as a whole <a crime against the public>. **2.** A place open or visible to the public <in public>.

**public access to court electronic records.** A computer system by which subscribers can obtain online information from the federal courts, including information from a court's docket sheet about the parties, filing, and orders in a specific case. — *Abbr.* PACER.

**public accommodation.** A business establishment that provides lodging, food, entertainment, or other services to the public; esp. (as defined by the Civil Rights Act of 1964), one that affects interstate commerce or is supported by state action.

**public administration.** See ADMINISTRATION.

**public administrator.** See ADMINISTRATOR (1).

**public advocate.** See ADVOCATE.

**public agency.** See AGENCY (3).

**public agent.** See AGENT.

**publican** (pəb-li-kən). *Hist.* A person authorized by license to keep a public house for consumption of alcoholic beverages on or off the premises.

**publicanus** (pəb-li-kay-nəs). [Latin] A farmer of the public revenue; that is, a tax collector.

**public appointment.** See APPOINTMENT (1).

**publication**, *n.* **1.** Generally, the act of declaring or announcing to the public. **2.** *Copyright.* The distribution of copies of a work to the public. ● At common law, publication marked the dividing line between state and federal protection, but the Copyright Act of 1976 superseded most of common-law copyright and thereby diminished the significance of publication.

"The concept of publication was of immense importance under the 1909 Act. It became a legal word of art, denoting a process much more esoteric than is suggested by the lay definition of the term. That it thus evolved was due largely to the American dichotomy between common law and statutory copyright, wherein the act of publication constituted the dividing line between the two systems of protection [state and federal]." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.01, at 4-3 (Supp. 1997).

**general publication.** A distribution of copies not limited to a selected group, whether or not restrictions are placed on the use of the work. ● A general publication was generally held to divest common-law rights in a work.

**limited publication.** A distribution of copies limited to a selected group at a time when copies are not available to persons not included in the group; a publication that communicates the contents of a work to a definitely selected group and for a limited purpose, without the right of diffusion, reproduction, distribution, or sale. — Also termed *private publication*.

**3. Defamation.** The communication of defamatory words to someone other than the person defamed.

"Publication means the act of making the defamatory statement known to any person or persons other than the plaintiff himself. It is not necessary that there should be any publication in the popular sense of making the statement public. A private and confidential communication to a single individual is sufficient. Nor need it be published in the sense of being written or printed; for we have seen that actions as well as words may be defamatory. A communication to the person defamed himself, however, is not a sufficient publication on which to found civil proceedings; though it is otherwise in the case of a criminal prosecution, because such a communication may provoke a breach of the peace. Nor does a communi-

cation between husband and wife amount to publication; domestic intercourse of this kind is exempt from the restrictions of the law of libel and slander. But a statement by the defendant to the wife or husband of the plaintiff is a ground of action." R.F.V. Heuston, *Salmond on the Law of Torts* 154 (17th ed. 1977).

"The publication of a libel might be in the form of a book, pamphlet or newspaper, but nothing of that nature is required. A letter sent to a single individual is sufficient." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 489 (3d ed. 1982).

**4. Wills.** The formal declaration made by a testator when signing the will that it is the testator's will.

**public attorney.** See ATTORNEY (2).

**public authority.** See AUTHORITY (3).

**public-benefit corporation.** See *public corporation* under CORPORATION.

**public bill.** See BILL (3).

**public boundary.** See BOUNDARY.

**public building.** A building that is accessible to the public; esp., one owned by the government.

**public carrier.** See *common carrier* under CARRIER.

**public character.** See PUBLIC FIGURE.

**public contract.** See CONTRACT.

**public controversy.** See CONTROVERSY.

**public-convenience-and-necessity standard.** A common criterion used by a governmental body to assess whether a particular request or project is suitable for the public.

**public corporation.** See CORPORATION.

**public debt.** See DEBT.

**public defender.** A lawyer or staff of lawyers, usu. publicly appointed, whose duty is to represent indigent criminal defendants. — Abbr. P.D.

**public delict.** See DELICT.

**public disclosure of private facts.** The public revelation of some aspect of a person's private life without a legitimate public purpose. • The

disclosure is actionable in tort if the disclosure would be highly objectionable to a reasonable person. See INVASION OF PRIVACY.

**public document.** See DOCUMENT.

**public domain.** **1.** Government-owned land. **2.** The realm of publications, inventions, and processes that are not protected by copyright or patent. • Things in the public domain can be appropriated by anyone without liability for infringement.

"[P]ublic domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property. Public domain is the rule: intellectual property is the exception." 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 1.01[2], at 1-3 (3d ed. 1996).

**public-duty doctrine.** *Torts.* The rule that a governmental entity (such as a state or municipality) cannot be held liable for an individual plaintiff's injury resulting from a governmental officer's or employee's breach of a duty owed to the general public rather than to the individual plaintiff. — Also termed *public-duty rule*. See SPECIAL-DUTY DOCTRINE.

**public easement.** See EASEMENT.

**public enemy.** See ENEMY.

**public entity.** See ENTITY.

**public-exchange offer.** See OFFER.

**public fact.** See FACT.

**public figure.** A person who has achieved fame or notoriety or who has voluntarily become involved in a public controversy. • A public figure (or public official) suing for defamation must prove that the defendant acted with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710 (1964). — Also termed *public character*.

**limited-purpose public figure.** A person who, having become involved in a particular public issue, has achieved fame or notoriety in relation to that particular issue.

**public forum.** *Constitutional law.* Public property where people traditionally gather to express ideas and exchange views. • To be constitutional, the government's regulation of a public forum must be narrowly tailored to serve a significant government interest and

must usu. be limited to time-place-or-manner restrictions. Cf. NONPUBLIC FORUM.

**designated public forum.** Public property that has not traditionally been open for public assembly and debate but that the government has opened for use by the public as a place for expressive activity, such as a public-university facility or a publicly owned theater. • Unlike a traditional public forum, the government does not have to retain the open character of a designated public forum. Also, the subject matter of the expression permitted in a designated public forum may be limited to accord with the character of the forum; content-neutral time, place, and manner restrictions are generally permissible. But any prohibition based on the content of the expression must be narrowly drawn to effectuate a compelling state interest, as with a traditional public forum. — Also termed *limited public forum*; *nontraditional public forum*.

**traditional public forum.** Public property that has by long tradition — as opposed to governmental designation — been used by the public for assembly and expression, such as a public street, public sidewalk, or public park. • To be constitutional, the government's content-neutral restrictions of the time, place, or manner of expression must be narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. Any government regulation of expression that is based on the content of the expression must meet the even higher constitutional test of being narrowly tailored to serve a compelling state interest.

**public-function doctrine.** See PUBLIC-FUNCTION TEST.

**public-function rationale.** See GOVERNMENTAL-FUNCTION THEORY.

**public-function test.** In a section 1983 suit, the doctrine that a private person's actions constitute state action if the private person performs functions that are traditionally reserved to the state. — Also termed *public-function doctrine*; *public-function theory*.

**public fund.** See FUND (1).

**public grant.** See PATENT (2).

**public health.** See HEALTH.

**public hearing.** See HEARING.

**public highway.** See HIGHWAY.

**public house.** See HOUSE.

**publici juris** (pəb-li-sī joor-is). [Latin] Of public right <a tradename may through general use cease to indicate specifically the merchandise of any particular person and may so become merely descriptive and *publici juris*>.

**public institution.** See INSTITUTION (3).

**public interest.** 1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

**public-interest exception.** The principle that an appellate court may consider and decide a moot case — although such decisions are generally prohibited — if (1) the case involves a question of considerable public importance, (2) the question is likely to arise in the future, and (3) the question has evaded appellate review.

**public international law.** See INTERNATIONAL LAW.

**public intoxication.** See INTOXICATION.

**public invitee.** See INVITEE.

**publicist.** 1. A public-relations person. 2. An international-law scholar.

**public land.** See LAND.

**public law.** 1. The body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together. Cf. PRIVATE LAW (1). 2. A statute affecting the general public. • Federal public laws are first published in *Statutes at Large* and are eventually collected by subject in the U.S. Code. — Abbr. Pub. L.; P.L. — Also termed *public statute* (abbr. p.s.); *general statute*. Cf. *general law* (1) under LAW. 3. Constitutional law.

**public-liability insurance.** See *liability insurance* under INSURANCE.



**publicly held corporation.** See *public corporation* (1) under CORPORATION.

**publicly traded partnership.** See PARTNERSHIP.

**public market.** See MARKET.

**public-meeting law.** See SUNSHINE LAW.

**public minister.** See MINISTER.

**public morality.** See MORALITY.

**public necessity.** See NECESSITY.

**public notice.** See NOTICE.

**public nuisance.** See NUISANCE.

**public offense.** See OFFENSE (1).

**public offering.** See OFFERING.

**public office.** A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period.

**public official.** A person elected or appointed to carry out some portion of a government's sovereign powers.

**public passage.** A right held by the public to pass over a body of water, whether the underlying land is publicly or privately owned.

**public person.** A sovereign government, or a body or person delegated authority under it.

**public policy.** 1. Broadly, principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society. • Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is "contrary to public policy." — Also termed *policy of the law*.

"The policy of the law, or public policy, is a phrase of common use in estimating the validity of contracts. Its history is obscure; it is most likely that agreements which tended to restrain trade or to promote litigation were the first to elicit the principle that the courts would look to the interests of the public in giving efficacy to contracts. Wagers, while they continued to be legal, were a frequent provocative of judicial ingenuity on this point, as is sufficiently shown by the case of *Gilbert v. Sykes* [16 East 150 (1812)] . . . : but it does not seem probable that the doctrine of public policy began in the endeavor to

elude their binding force. Whatever may have been its origin, it was applied very frequently, and not always with the happiest results, during the latter part of the eighteenth and the commencement of the nineteenth century. Modern decisions, however, while maintaining the duty of the courts to consider the public advantage, have tended more and more to limit the sphere within which this duty may be exercised." William R. Anson, *Principles of the Law of Contract* 286 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. More narrowly, the principle that a person should not be allowed to do anything that would tend to injure the public at large.

**public-policy limitation.** *Tax.* A judicially developed principle that a person should not be allowed to deduct expenses related to an activity that is contrary to the public welfare. • This principle is reflected in the Internal Revenue Code's specific disallowance provisions (such as for kickbacks and bribes).

**public pond.** See GREAT POND.

**public power.** See POWER.

**public property.** See PROPERTY.

**public prosecutor.** See DISTRICT ATTORNEY.

**public purpose.** An action by or at the direction of a government for the benefit of the community as a whole.

**public record.** See RECORD.

**public relations.** 1. The business of creating or maintaining a company's goodwill or good public image. 2. A company's existing goodwill or public image. — Abbr. PR.

**public reprimand.** See REPRIMAND.

**public right.** See RIGHT.

**public safety.** The welfare and protection of the general public, usu. expressed as a governmental responsibility <Department of Public Safety>.

**public sale.** See SALE.

**public school.** See SCHOOL.

**public seal.** See SEAL.

**public sector.** The part of the economy or an industry that is controlled by the government. Cf. PRIVATE SECTOR.

**public security.** See SECURITY.

**public service.** **1.** A service provided or facilitated by the government for the general public's convenience and benefit. **2.** Government employment; work performed for or on behalf of the government.

**public-service commission.** See COMMISSION (3).

**public-service corporation.** See CORPORATION.

**public servitude.** See SERVITUDE (1).

**public statute.** **1.** See *general statute* under STATUTE. **2.** See PUBLIC LAW (2).

**public stock.** See STOCK.

**public store.** See STORE.

**public tort.** See TORT.

**public, true, and notorious.** *Hist. Eccles. law.* The concluding words of each allegation in a court petition.

**public trust.** See *charitable trust* under TRUST.

**public-trust doctrine.** The principle that navigable waters are preserved for the public use, and that the state is responsible for protecting the public's right to the use.

**publicum jus** (pəb-li-kəm jəs). [Latin] See JUS PUBLICUM.

**public use.** See USE (1).

**public-use bar.** *Patents.* A statutory bar that prevents the granting of a patent for an invention that was publicly used or sold in the United States more than one year before the application date. 35 USCA § 102(b). — Also termed *prior-use bar*.

**public utility.** See UTILITY.

**public utility district.** See *municipal utility district* under DISTRICT.

**Public Utility Holding Company Act.** A federal law enacted in 1935 to protect investors and consumers from the economic disadvantages produced by the small number of holding companies that owned most of the nation's utilities. • The Act also sought to protect the public from deceptive security advertising. 15 USCA §§ 79 et seq. — Abbr. PUHCA.

**public verdict.** See VERDICT.

**public vessel.** See VESSEL.

**Public Vessels Act.** A federal law enacted in 1925 to allow claims against the United States for damages caused by one of its vessels. 46 USCA §§ 781–790.

**public war.** See WAR.

**public water.** See WATER.

**public welfare.** See WELFARE.

**public-welfare offense.** See OFFENSE (1).

**public wharf.** See WHARF.

**public works.** See WORKS.

**public worship.** See WORSHIP.

**public wrong.** See WRONG.

**publish, vb.** **1.** To distribute copies (of a work) to the public. **2.** To communicate (defamatory words) to someone other than the person defamed. **3.** To declare (a will) to be the true expression of one's testamentary intent. **4.** To make (evidence) available to a jury during trial. See PUBLICATION.

**PUC.** *abbr.* Public Utilities Commission.

**PUD.** *abbr.* **1.** PLANNED-UNIT DEVELOPMENT. **2.** See *municipal utility district* under DISTRICT.

**pudzeld.** See WOOD-GELD.

**pueblo** (pweb-loh). [Spanish] A town or village, esp. in the southwestern United States.

**puer** (pyoo-ər), *n.* [Latin] *Roman law.* **1.** A child, esp. a boy. **2.** A male slave. Pl. *pueri* (pyoo-ɪ).

**puerility** (pyoo-ə-ril-ə-tee or pyuu-ril-ə-tee). *Civil law*. A child's status between infancy and puberty.

**pueritia** (pyoo-ə-rish-ee-ə). [Latin] *Roman law*. Childhood, esp. up to the age of 17, the minimum age for pleading before a magistrate. Cf. AETAS INFANTIAE PROXIMA; AETAS PUBERTATI PROXIMA.

**puffer**. See BY-BIDDER.

**puffing**. **1.** The expression of an exaggerated opinion — as opposed to a factual representation — with the intent to sell a good or service. ● Puffing involves expressing opinions, not asserting something as a fact. Although there is some leeway in puffing goods, a seller may not misrepresent them or say that they have attributes that they do not possess. — Also termed *puffery*; *sales puffery*; *dealer's talk*.

“‘Dealer's puffing,’ so long as it remains in the realm of opinion or belief, will not support a conviction of false pretenses however extravagant the statements.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 369 (3d ed. 1982).

**2.** Secret bidding at an auction by or on behalf of a seller; BY-BIDDING.

**PUHCA**. *abbr.* PUBLIC UTILITY HOLDING COMPANY ACT.

**puis** (pwis or pwee). [French] Afterwards; since.

**puis darrein continuance** (pwis dar-ayn kən-tin-yoo-ənts). [Law French “since the last continuance”] See *plea puis darrein continuance* under PLEA (3).

**puisne** (pyoo-nee), *adj.* [Law French] Junior in rank; subordinate.

**puisne judge**. See JUDGE.

**puisne mortgage**. See *junior mortgage* under MORTGAGE.

**Pullman abstention**. See ABSTENTION.

**pulsare** (pəl-sair-ee), *vb.* [Latin] *Civil law*. To accuse or charge; to proceed against at law.

**pulsator** (pəl-say-tər). *Civil law*. A plaintiff or actor.

**punctum temporis** (pəngk-təm tem-pə-ris). [Latin] A point of time; an instant.

**punies** (pyoo-nee). *Slang*. Punitive damages. See DAMAGES.

**punishable**, *adj.* **1.** (Of a person) subject to a punishment <there is no dispute that Jackson remains punishable for these offenses>. **2.** (Of a crime or tort) giving rise to a specified punishment <a felony punishable by imprisonment for up to 20 years>. — **punishability**, *n.*

**punishment**, *n.* A sanction — such as a fine, penalty, confinement, or loss of property, right, or privilege — assessed against a person who has violated the law. — **punish**, *vb.* See SENTENCE.

“Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality it degenerates into an arbitrary act of violence that can produce nothing but bad social effects.” Glanville Williams, *Criminal Law* 575 (2d ed. 1961).

“In the treatment of offenders there is a clear and unmistakable line of division between the function of the judge and that of the penologist. I should modify that: the law is clear only if it is first made clear in what sense the word ‘treatment’ is being used. For in this context the word can be used in two senses, one wide and the other narrow. Let me take the wide meaning first. The object of a sentence is to impose punishment. For ‘punishment’, a word which to many connotes nothing but retribution, the softer word ‘treatment’ is now frequently substituted; this is the wider meaning. The substitution is made, I suppose, partly as a concession to the school which holds that crime is caused by mental sickness, but more justifiably as a reminder that there are other methods of dealing with criminal tendencies besides making the consequences of crime unpleasant.” Patrick Devlin, *The Judge* 32–33 (1979).

**capital punishment**. See DEATH PENALTY (1).

**corporal punishment**. Physical punishment; punishment that is inflicted upon the body (including imprisonment).

**cruel and unusual punishment**. Punishment that is torturous, degrading, inhuman, grossly disproportionate to the crime in question, or otherwise shocking to the moral sense of the community. ● Cruel and unusual punishment is prohibited by the Eighth Amendment.

**cumulative punishment**. Punishment that increases in severity when a person is convicted of the same offense more than once.

**deterrent punishment**. Punishment the purpose of which is to deter others from committing crimes by making an example of the offender so that like-minded people are warned of the consequences of crime.

**excessive punishment**. Punishment that is not justified by the gravity of the offense or

the defendant's criminal record. See *excessive fine* (1) under FINE (5).

**infamous punishment.** Punishment by imprisonment, usu. in a penitentiary. See *infamous crime* under CRIME.

**nonjudicial punishment.** *Military law.* A procedure in which a person subject to the Uniform Code of Military Justice receives official punishment for a minor offense. • In the Navy and Coast Guard, nonjudicial punishment is termed *captain's mast*; in the Marine Corps, it is termed *office hours*; and in the Army and Air Force, it is referred to as *Article 15*. Nonjudicial punishment is not a court-martial.

**preventive punishment.** Punishment the purpose of which is to prevent a repetition of wrongdoing by disabling the offender.

**reformatory punishment.** Punishment the purpose of which is to change the character of the offender.

**retributive punishment.** Punishment the purpose of which is to satisfy the community's retaliatory sense of indignation that is provoked by injustice.

"The fact that it is natural to hate a criminal does not prove that retributive punishment is justified." Glanville Williams, *The Sanctity of Life and the Criminal Law* 60 (1957).

**punitive, adj.** Involving or inflicting punishment. — Also termed *punitory*.

**punitive articles.** *Military law.* Articles 77–134 in the Uniform Code of Military Justice. • These articles list the crimes in the military-justice system.

**punitive damages.** See DAMAGES.

**punitive segregation.** See SEGREGATION.

**punitive statute.** See *penal statute* under STATUTE.

**punitory.** See PUNITIVE.

**punitory damages.** See *punitive damages* under DAMAGES.

**pupillary substitution** (pyoo-pə-ler-ee). See SUBSTITUTION (4).

**pupillus** (pyoo-pil-əs). [Latin] *Roman law.* A child under the age of puberty and under the authority of a *tutor*.

**pur** (pər or poor). [Law French] By; for.

**pur autre vie** (pər oh-trə [or oh-tər] vee). [Law French "for another's life"] For or during a period measured by another's life <a life estate *pur autre vie*>. — Also spelled *per autre vie*.

**purchase, n.** **1.** The act or an instance of buying. **2.** The acquisition of real property by one's own or another's act (as by will or gift) rather than by descent or inheritance. — **purchase, vb.** Cf. DESCENT (1).

**purchase, words of.** See WORDS OF PURCHASE.

**purchase accounting method.** See ACCOUNTING METHOD.

**purchase agreement.** A sales contract. Cf. PURCHASE AGREEMENT.

**purchase money.** The initial payment made on property secured by a mortgage.

**purchase-money interest.** See *purchase-money security interest* under SECURITY INTEREST.

**purchase-money mortgage.** See MORTGAGE.

**purchase-money resulting trust.** See TRUST.

**purchase-money security interest.** See SECURITY INTEREST.

**purchase order.** A document authorizing a seller to deliver goods with payment to be made later.

**purchaser.** **1.** One who obtains property for money or other valuable consideration; a buyer.

**affiliated purchaser.** *Securities.* Any of the following: (1) a person directly or indirectly acting in concert with a distribution participant in connection with the acquisition or distribution of the securities involved; (2) an affiliate who directly or indirectly controls the purchases of those securities by a distribution participant, or whose purchases are controlled by such a participant, or whose purchases are under common control with those of such a participant; (3) an affiliate, who is a broker or a dealer (except a broker-dealer whose business consists solely of effecting transactions in "exempted securities," as defined in the Exchange Act); (4) an affiliate (other than a broker-dealer) who regularly purchases securities through a broker-dealer, or otherwise, for its own account or for the

account of others, or recommends or exercises investment discretion in the purchase or sale of securities (with certain specified exceptions). SEC Rule 10b-18(a)(2) (17 CFR § 240.10b-18(a)(2)).

**bona fide purchaser.** One who buys something for value without notice of another's claim to the item or of any defects in the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. — Abbr. BFP. — Also termed *good-faith purchaser*; *purchaser in good faith*; *innocent purchaser*.

**bona fide purchaser for value.** One who purchases legal title to real property, without actual or constructive notice of any infirmities, claims, or equities against the title. • Generally, a bona fide purchaser for value is not affected by the transferor's fraud against a third party, and has a superior right to the transferred property as against the transferor's creditor to the extent of the consideration that the purchaser has paid. — Also termed *innocent purchaser for value*.

**good-faith purchaser.** See *bona fide purchaser*.

**innocent purchaser.** See *bona fide purchaser*.

**innocent purchaser for value.** See *bona fide purchaser for value*.

**purchaser for value.** A purchaser who pays consideration for the property bought.

**purchaser in good faith.** See *bona fide purchaser*.

2. One who acquires real property by means other than descent or inheritance.

**first purchaser.** An ancestor who first acquired an estate that still belongs to the family.

**pure accident.** See *unavoidable accident* under ACCIDENT.

**pure annuity.** See *nonrefund annuity* under ANNUITY.

**pure-comparative-negligence doctrine.** The principle that liability for negligence is apportioned in accordance with the percentage of fault that the fact-finder assigns to each party and that a plaintiff's percentage of fault reduces the amount of recoverable damages but does not bar recovery. Cf. 50-PERCENT RULE. See *comparative negligence* under NEGLIGENCE; APPORTIONMENT OF LIABILITY.

**pure easement.** See *easement appurtenant* under EASEMENT.

**pure obligation.** See OBLIGATION.

**pure plea.** See PLEA (3).

**pure race statute.** See RACE STATUTE.

**pure risk.** See RISK.

**pure speech.** See SPEECH.

**pure theory.** The philosophy of Hans Kelsen, in which he contends that a legal system must be "pure" — that is, self-supporting and not dependent on extralegal values. • Kelsen's theory, set out in such works as *General Theory of Law and the State* (1945) and *The Pure Theory of Law* (1934), maintains that laws are norms handed down by the state. Laws are not defined in terms of history, ethics, sociology, or other external factors. Rather, a legal system is an interconnected system of norms, in which coercive techniques are used to secure compliance. The validity of each law, or legal norm, is traced to another legal norm. Ultimately, all laws must find their validity in the society's basic norm (*grundnorm*), which may be as simple as the concept that the constitution was validly enacted. See *basic norm* under NORM.

**pure villeinage.** See VILLEINAGE.

**purgation** (pər-gay-shən). *Hist.* The act of cleansing or exonerating oneself of a crime or accusation by an oath or ordeal.

**canonical purgation.** Purgation by 12 oath-helpers in an ecclesiastical court. See COMPURGATION.

**vulgar purgation.** Purgation by fire, hot irons, battle, or cold water; purgation by means other than by oath-helpers. • Vulgar purgation was so called because at first it was not sanctioned by the church.

**purgatory oath.** See OATH.

**purge, vb.** To exonerate (oneself or another) of guilt <purged the defendant of contempt>.

**purpart** (pər-pahrt). A share of an estate formerly held in common; a part in a division. — Formerly also termed *purparty*; *perparts*.

**purparty** (pər-pahr-tee). A part of an estate allotted to a coparcener. — Also spelled *pourparty*.

**purport** (pər-port), *n.* The idea or meaning that is conveyed or expressed, esp. by a formal document.

**purport** (pər-port), *vb.* To profess or claim falsely; to seem to be <the document purports to be a will, but it is neither signed nor dated>.

**purported**, *adj.* Reputed; rumored.

**purpose**. An objective, goal, or end; specif., the business activity that a corporation is chartered to engage in.

**purpose approach**. See MISCHIEF RULE.

**purpose clause**. An introductory clause to a statute explaining its background and stating the reasons for its enactment.

**purposeful**, *adj.* Done with a specific purpose in mind.

**purposive construction**. See CONSTRUCTION.

**purpresture** (pər-pres-chər). An encroachment upon public rights and easements by appropriation to private use of that which belongs to the public. — Also spelled *pourpresture*.

**purprise** (pər-prɪz), *vb.* [Law French] *Hist.* To encroach on land illegally; to make a purpresture.

**purse**, *n.* A sum of money available to the winner of a contest or event; a prize.

**purser**. A person in charge of accounts and documents on a ship.

**pursuant to**. **1.** In compliance with; in accordance with; under <she filed the motion pursuant to the court's order>. **2.** As authorized by; under <pursuant to Rule 56, the plaintiff moves for summary judgment>. **3.** In carrying out <pursuant to his responsibilities, he ensured that all lights had been turned out>.

**pursuit**. **1.** An occupation or pastime. **2.** The act of chasing to overtake or apprehend. See FRESH PURSUIT.

**pursuit of happiness**. The principle — announced in the Declaration of Independence — that a person should be allowed to pursue the person's desires (esp. in regard to an occupation) without unjustified interference by the government.

**pur tant que** (pər tant kyoo or poor tahn kə). [Law French] Forasmuch as; because; to the intent that.

**purus idiota** (pyoor-əs id-ee-oh-tə). [Latin] An absolute or congenital idiot. See IDIOT.

**purview** (pər-vyoo). **1.** Scope; area of application. **2.** The body of a statute following the preamble.

"The word 'purview' appears sometimes to be confined to so much of the body of the statute as would be left by omitting the exceptions, provisos, and savings clauses; and as the word is ambiguous, and not very useful at best, a wise course may be not to use it at all." William M. Lile et al., *Brief Making and the Use of Law Books* 336 (3d ed. 1914).

**pusher**. A person who sells illicit drugs.

**put**, *n.* See *put option* under OPTION.

**putative** (pyoo-tə-tiv), *adj.* Reputed; believed; supposed.

**putative father**. See FATHER.

**putative marriage**. See MARRIAGE (1).

**putative spouse**. *Family law*. A spouse who believes in good faith that his or her invalid marriage is legally valid. See *putative marriage* under MARRIAGE (1).

**put bond**. See BOND (3).

**put in**, *vb.* To place in due form before a court; to place among the records of a court.

**put option**. See OPTION.

**put price**. See *strike price* under PRICE.

**puttable** (puut-ə-bəl), *adj.* (Of a security) capable of being required by the holder to be redeemed by the issuing company.

**putting in fear**. The threatening of another person with violence to compel the person to hand over property. ● These words are part of the common-law definition of robbery.

**pyramid distribution plan.** See PYRAMID SCHEME.

**pyramiding.** A speculative method used to finance a large purchase of stock or a controlling interest by pledging an investment's unrealized profit. See LEVERAGE; MARGIN.

**pyramiding inferences, rule against.** *Evidence.* A rule prohibiting a fact-finder from piling one inference on another to arrive at a conclusion. • Today this rule is followed in only

a few jurisdictions. Cf. REASONABLE-INFERENCE RULE.

**pyramid scheme.** A property-distribution scheme in which a participant pays for the chance to receive compensation for introducing new persons to the scheme, as well as for when those new persons themselves introduce participants. • Pyramid schemes are illegal in most states. — Also termed *endless-chain scheme*; *chain-referral scheme*; *multilevel-distribution program*; *pyramid distribution plan*. Cf. PONZI SCHEME.